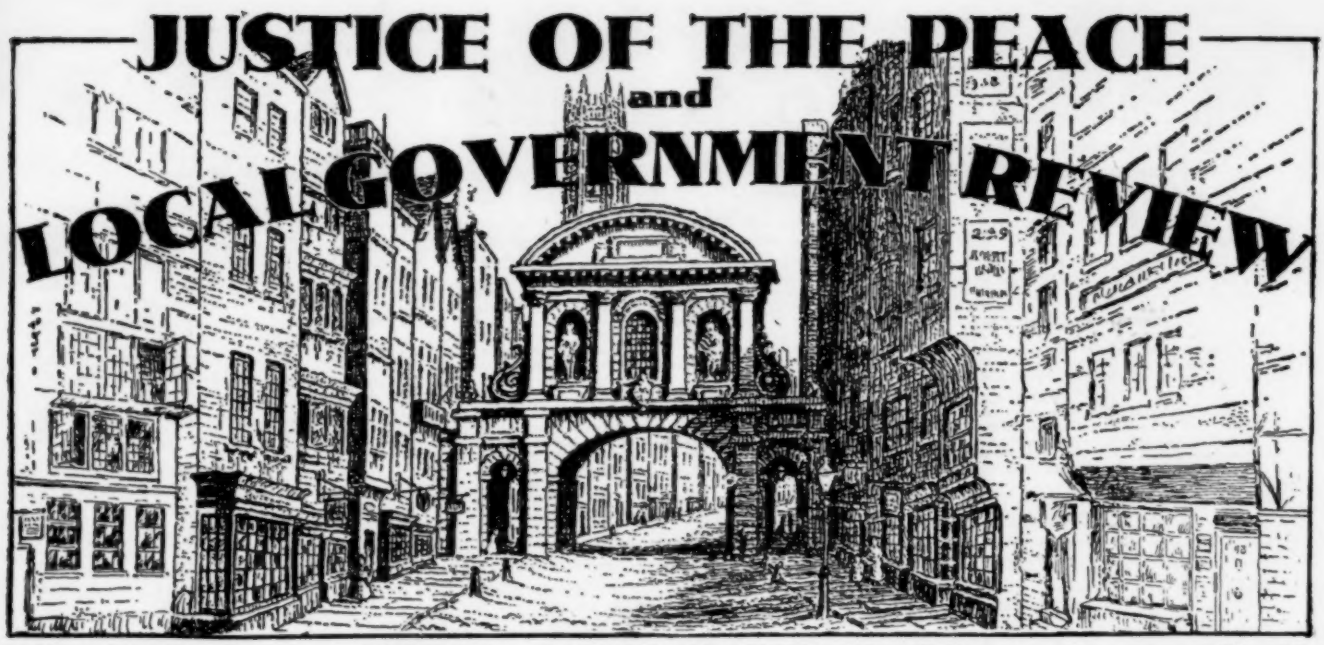

VOL. CXVIII LONDON : SATURDAY, JUNE 26, 1954 No. 26

CONTENTS

REPORTS

Official & Classified Advertisements, etc.

Official Advertisements (Appointments, Tenders, etc.), 2s. 6d. per line and 3s. 6d. per displayed headline. Classified Advertisements, 24 words 6s. (each additional line 1s. 6d.) Box Number, 1s. extra *Latest time for receipt* 10 *a.m. Thursday*

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NOTIFICATION OF VACANCIES ORDER, 1952

The engagement of persons answering these advertisements must be made through a Local Office of the Ministry of Labour or a Scheduled Employment Agency if the applicant is a man aged 18-64 or a woman aged 18-59 inclusive unless he or she, or the employment, is excepted from the provisions of the Notification of Vacancies Order, 1952. *Note :* Barristers, Solicitors, Local Government Officers, who are engaged in a professional, administrative or executive capacity, Police Officers and Social Workers are excepted from the provisions of the Order.

APPOINTMENTS

THE LONDON POLICE COURT MISSION REQUIRES :

(*a*) A WARDEN of exceptional ability and experience and possessing a real sense of vocation for High Beech, an approved Probation Home situated near Redhill, Surrey. The Home is for thirty-five boys aged 15–18 and has departments for schoolroom teaching, gardening and carpentry.

Applicants should have good educational qualifications and wide experience, including residential work with youths of this age. Teaching qualifications are an added advantage.

The salary will not be less than £525 p.a. ess £108 p.a. for residential emoluments. An excellent flat is available.

(*b*) A MATRON for High Beech who is able to make a real contribution to the welfare of the boys. Duties will include catering and supervision of all household domestic work ; some knowledge of first aid desirable.

Salary on the scale £350 by £15 to £440 p.a. less £108 p.a. for residential emoluments—initial salary according to qualifications and experience.

Applications for the post of Warden and Matron, stating age, education and experience together with the names of three referees to the Secretary, High Beech Committee, 2, Hobart Place, London, S.W.1.

METROPOLITAN MAGISTRATES' COURTS require male BARRISTER OR SOLICITOR for pensionable post of CLERK. Applicants must be aged between twenty-six and thirty-two on June 30, 1954. Commencing salary £600—£700 according to age. On completion of probation (normally one year) successful applicant would be regarded Deputy Chief Clerk on salary scale £800 (at age thirty)—£1,000. All salaries attract percentage pay addition. Applications, giving age, qualifications, experience, and names of two referees by July 10, 1954, to Senior Chief Clerk, Bow Street Magistrates' Court, W.C.2, from whom further particulars may be obtained.

Amended Advertisement.

HAMMERSMITH

ASSISTANT SOLICITOR. Salary within Grades A.P.T. 8/9 (£785/960 plus London weighting) according to qualifications and experience. Application form, returnable by July 10, from Town Clerk, Town Hall, W.6.

SITUATIONS WANTED

AFTER THREE YEARS reading law at Cambridge, ex public school man seeks articles, beginning in September, preferably without premium, with clerk of large authority. Box No. A.20, Office of this Newspaper.

LEGAL NOTICES, ETC.

GEORGE LAYTON deceased.

WILL any person having a Will or knowledge of any Will of the deceased late of Bicester who died on May 14, 1954, please communicate at once with Messrs. Alfred Truman and Son, Solicitors, Bicester, Oxon.

INQUIRIES

YORKSHIRE DETECTIVE BUREAU (T. E. Hoyland, Ex-Detective Sergeant). Member of The Association of British Detectives, World Secret Service Association and Associated American Detective Agencies. DIVORCE — OBSERVATIONS — ENQUIRIES—Civil and Criminal investigations anywhere. Over 1,000 Agents. Over 27 years C.I.D. and Private Detective Experience at your Service. Empire House, 10, Piccadilly, Bradford. Tel. 25129. (After office hours, 26823.) Established 1945.

PARKINSON & CO., East Boldon, Co. Durham. Private and Commercial Investigators. Instructions accepted from Solicitors only. Tel. : Boldon 7301. Available day and night.

Amended Advertisement.

COUNTY OF ESSEX

Appointment of Two Assistant Prosecuting Solicitors

APPLICATIONS are invited from solicitors with experience of advocacy. The persons appointed will be required to conduct prosecutions in the Magistrates' Courts of the County on behalf of the Police and the County Council. They must also have ability to draft briefs and instruct counsel at Quarter Sessions and Assizes. Their salaries will be fixed in accordance with their qualifications and experience but will not exceed £1,250 a year. Posts superannuable. Medical examination necessary. Canvassing forbidden. Applications, stating age, education, qualifications and experience, with typewritten copies of not more than three recent testimonials (which will not be returned), should be sent as soon as possible to the County Clerk, County Hall, Chelmsford.

HERTFORDSHIRE MAGISTRATES' COURTS COMMITTEE

Hatfield and St. Albans (County) Petty Sessional Divisions

APPLICATIONS are invited for the appointment of Second Assistant (male) in the office at St. Albans of the Clerk to the Justices for the above Divisions, whose duties would be the keeping of all accounts of the Justices' Clerk's Office and the collection of moneys due under Court Orders, etc. Experience of work of a similar nature would be an advantage.

The salary will be in accordance with the General Division of the National Joint Council scales (maximum £470 at age thirty).

Applications in writing, with the names of two referees, should reach the undersigned not later than July 10, 1954.

NEVILLE MOON,
Clerk of the Committee.

County Hall,
Hertford, Herts.
June 25, 1954.

HAMPSHIRE

APPLICATIONS are invited from solicitors with experience in Local Government work for the post of Assistant Solicitor on the staff of the Clerk of the County Council at a salary of £1,050×£50—£1,250. The commencing salary will be fixed in accordance with qualifications.

The post is pensionable and the appointment will be subject to the submission of a satisfactory medical report. In approved cases the County Council are prepared to assist newly appointed members of the staff to meet removal and other expenses.

Applications, giving full particulars of age, education and experience together with the names of two persons to whom reference may be made, should reach the Clerk of the County Council, The Castle, Winchester, by July 12.

BUCKS MAGISTRATES' COURTS COMMITTEE

Slough Petty Sessional Division

Appointment of First Assistant to Clerk to Justices

APPLICATIONS are invited for the above whole-time appointment.

Applicants must have considerable experience of magisterial law and practice, be capable of taking Courts, and of supervising and controlling Fines and Fees accounts and Court Collecting Officer's accounts.

Commencing salary will be £650×£20 to £710 (Grade Va of Administrative, Professional and Technical Division of National Joint Council Scales.

The appointment will be superannuable, and the successful candidate will be required to pass a medical examination.

Applications, stating age, present position and experience, together with names of two referees, should be sent to Mr. Joseph Davies, Clerk to the Justices, Justices' Clerk's Office, High Street, Slough, not later than July 12, 1954.

GUY R. CROUCH,
Clerk to the Magistrates' Courts Committee.

County Hall,
Aylesbury.

Justice of the Peace
and
Local Government Review
[ESTABLISHED 1837.]

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Pages 399-414 Offices : LITTLE LONDON, CHICHESTER, SUSSEX.

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NOTES of the WEEK

The Clerk's Notes

It is a sound practice in a magistrate's court for the clerk to take an adequate note of the evidence in all summary proceedings. If this practice is followed, there is always a record to be referred to in the event of any subsequent proceedings or inquiry, and it is possible to supply a copy to anyone who has proper reason for requiring it. In matrimonial cases the necessity for a full and clear note has been emphasized over and over again, and clerks are well aware of it.

In the case of *Hobby* v. *Hobby* (1954) 217 L.T. 301, the Divisional Court made observations, on the hearing of an appeal from a maintenance order made by justices, on the kind of note taken by the clerk. It appeared that the clerk had in his possession, without objection on the part of the defendant, a copy of the proof of the wife's evidence, and based his notes on that. The Court expressed the opinion that this was not satisfactory, that the clerk should not be in possession of such proof, and that a note should be taken in a bound book, and not on deposition sheets.

Notes, as distinguished from depositions in proceedings for indictable offences, are generally taken in less formal style, and recognized abbreviations are often used. We do not think this is open to objection so long as the note is intelligible and capable of proper transcription, and contains the substance of all relevant evidence.

In this instance the case was remitted to the justices for re-hearing, it being held that the clerk had exceeded his duty by intervening during the examination or cross-examination of the parties, although both were legally represented, and by obstructing the defence by limiting the questions to be asked of the husband by his own advocate. The Court recognized that it was the duty of the clerk to see that the justices had what was and what was not relevant explained to them and to see that the time of the court was not wasted, but the clerk had gone beyond that in this instance, and it could not be said that justice had manifestly been seen to be done. There would therefore have to be a re-hearing.

Repeated interventions during the examination or cross-examination of witnesses by an advocate, even by the bench, have been disapproved by the superior courts. The same must apply to the clerk in a magistrates' court, and although an occasional suggestion or observation to an advocate from the clerk may be helpful and acceptable, anything like frequent interruption, or interference with the due conduct of a case by advocates on the part of the clerk is embarrassing, and, as the recent case shows, may lead to unfortunate results.

Felonies Involving Violence

If a person engages in a felony involving violence, and in the course of committing that felony he causes the death of the victim of the felony, he is guilty of murder. In *R.* v. *Gilbert and Grant* (*The Times*, June 3) there was an interesting argument by counsel for the appellants in the Court of Criminal Appeal on the meaning, in this connexion, of a felony involving violence. The Court was asked to hold that it must be limited to such offences as necessarily involved violence, such as rape, in which violence was intrinsically one ingredient. Another obvious example would be robbery with violence.

The Court was dealing with a case in which the appellants set out to commit larceny in a hotel. They knew there was a night porter whose duty it was to act as watchman and protect property. They used violence towards the porter, and left him bound and gagged. He was found dead. The appellants were convicted of murder. In delivering the judgment of the Court, the Lord Chief Justice rejected the submission that as the men were engaged in the offence of larceny, which was not a felony involving violence, the crime might have been manslaughter, the men having had no intention of causing death. Lord Goddard reviewed the facts, and said that the appellants had set out intending to use such violence as might become necessary if they met with resistance, and that provided the malice aforethought which was a necessary element in murder. They used violence and death ensued. The appeal was accordingly dismissed.

A New Detention Centre

Magistrates and others interested in the treatment of young offenders have been hoping for the establishment of detention centres in various parts of the country so that all courts may eventually have this method of treatment available to them.

The opening of a new detention centre at Blantyre House, Goudhurst, Kent, has therefore been welcomed. It will receive male offenders who are at least seventeen and under twenty-one, and will no doubt be the means of reducing the number of offenders of that age sent to prison under a short sentence.

A Home Office memorandum recalls that the object of detention centres was stated to be to provide short, sharp punishment designed to bring home to the offender the gravity of his situation. The memorandum goes on : " It is important that those sent to a centre should be physically fit for the fairly strenuous activities that will be carried on there. The experience already gained at Campsfield House junior centre may not prove to be applicable to a senior detention centre ; but the justices may like to know that it has been found there that boys who have

had previous institutional training and failed are in general not likely to benefit from detention in a centre.

"The centre at Goudhurst will provide simple and secure accommodation for some seventy boys. There will be brisk activity under strict discipline and supervision, beginning with early morning physical training followed by domestic duties and work. In the evening, there will be classes for further education, physical training, gymnastic instruction and other activities. Particular attention will be given to the inculcation of personal standards of cleanliness, obedience and good manners."

Public Health and The Visiting Forces Act

By the Public Health (Aircraft) (Amendment) Regulations, 1954, S.I. No. 674, and the Public Health (Ships) (Amendment) Regulations, 1954, S.I. No. 675, the aircraft and ships of armed forces of countries to which the Visiting Forces Act, 1952, applies, are exempted from the Public Health (Aircraft) Regulations, 1952, S.I. No. 1410 and from the Public Health (Ships) Regulations, 1952, S.I. No. 1411 respectively. The Regulations are in force from June 12.

Drunkenness among Young People

It is disquieting to read that there is a good deal of evidence that drunkenness is now much more prevalent in the age group under twenty-one than in those people over that age, and that this applies to girls as well as boys. There appears to have been a marked increase in the past few years.

The causes are largely a matter of speculation, but it may be that high wages have something to do with it. Many lads and girls find themselves in possession of pay packets that give them the impression that they are now adult wage-earners and entitled to behave as adults—which to them often means to act recklessly and spend extravagantly. Frequenting public-houses and clubs is one of their "adult" recreations, and to show how grown-up they are they drink freely. Parents are sometimes to blame for not requiring, or even for refusing, a part of the wages as a contribution in respect of board and lodging. Thus they do nothing to create a sense of responsibility in their children. Far too much spending money is the result in many cases in which wages are high and easily earned.

Cases that come before the magistrates' courts give magistrates anxiety. It is easy to impose a fine and leave it at that, but it is worth considering whether, in many instances, it might not be better to do something constructive by making a probation order, and thus bringing friendly and restraining influence to bear upon a thoughtless young offender.

Revived Interest in Natural Justice

Lord Justice Denning, in his character as *enfant terrible* of the bench, put an old but still lively cat among the pigeons in an address to a professional society this year, when he spoke of the methods of tribunals, inspectors, and government departments, in handling matters which by statute are not dealt with by the ordinary courts. We venture to think that hardly any practising lawyer or practical administrator stands today where Lord Hewart stood when writing *The New Despotism*, or on the ground still occupied, we suppose, by Sir Carleton Allen. Sheer necessity in the modern world, and the pretty wide experience now possessed by the bar itself of appearing before tribunals and inspectors, have pushed professional opinion off its eighteenth century pedestal. The lawyer of today no longer thinks of getting all disputed matters brought before the ordinary courts; he is tending to argue rather for improved and more co-ordinated methods, as between the ministerial jurisdictions themselves and the different types of tribunal which Parliament has created in the thirty-six years since the first world war.

There is much to be said for an overhaul of ministerial jurisdictions and tribunals, if one could but ensure its being carried out by an investigator or a body of informed persons free from professional or political prejudice. Meanwhile, the newly founded *British Journal of Administrative Law* neatly illustrates two points of view. A long theoretical article by Mr. J. E. S. Simon, Q.C., mentions as an instance of the wrong sort of way to do things the tribunals set up under the Agriculture Act, 1947, for the purpose of hearing allegations of bad farming. Another article in the same issue of the *Journal* puts on record the fact that the tribunals were agreed upon by both parties in the House of Commons as being preferable to hearings in the courts, and that after six years experience both the Country Landowners' Association and the National Farmers' Union have expressed their satisfaction with the tribunal system. Incidentally, the same article gives details of the divergence in procedure between these agricultural tribunals, of which some follow the orthodox formalities of an ordinary court, while others meet in a hotel lounge and even conduct examination and cross-examination sitting round in armchairs with everybody smoking.

These tribunals afford one illustration of the device sometimes adopted, of a body exercising jurisdiction independant of a Minister. On the other hand there is the common, and perhaps more controversial, type of jurisdiction where a Minister decides an issue after a public hearing by an inspector who reports to him, and may (it is complained) decide behind closed doors upon a basis of representations never heard in public. Fundamental constitutional questions are involved in this, which it is easy to slur over by fine phrases.

Dissuading a Witness

It is unwise, to say the least, for a solicitor instructed for the defence upon a criminal charge to visit the chief prosecution witness at the latter's home, and advise that witness about his or her right of refusing to give evidence. A solicitor who did so would run the risk of being charged with an attempt to dissuade a witness from giving evidence, as happened in a case reported from Liverpool last month. This is an offence at common law; the offence as stated in *Russell*, quoted by *Stone* at p. 688 of the 1954 edition, is endeavouring to dissuade a witness from giving evidence against a person indicted: the cases cited are *R.* v. *Tally* (1875) *The Times*, September 9, and *R.* v. *Greenberg* (1919) 83 J.P. 167. In principle, there seems no reason why there should not be an offence upon the same facts when the matter charged is still before the magistrates' court, and even when it is one punishable on summary conviction. The Liverpool case was singular in that the offence was triable, by virtue of the United States of America (Visiting Forces) Act, 1942, by a court martial of the United States Army. Here again, in principle, there is no reason why the rule of English common law should not apply when the court martial is to be held in England, even though it seems from American fiction (if that can be relied on, which may be a big "if") that the rule has not been incorporated in those of the United States where the common law has been received.

In the Liverpool proceedings the stipendiary magistrate's attention was drawn to an Act of Congress of May 5, 1950, declaring that in court martial cases the prosecution, the defence, and the court itself should have equal opportunity of "obtaining" witnesses, but this foreign statute does not on the face of it extend to "dissuading" witnesses, and (whatever it means) could not have availed the solicitor at Liverpool if, upon the facts, he had been found to have endeavoured to dissuade.

Those facts, again, were curious. A girl aged fourteen gave birth to a child, and an American soldier was alleged to be the father. As usual, the newspaper merely says he was accused of a " serious offence," so the reader is left guessing whether the charge was rape (an offence at common law in the United States) or the English statutory misdemeanour under s. 5 of the Criminal Law Amendment Act, 1885, which may or may not, so far as we know, be an offence in the United States.

However this may be, the girl was interviewed by an American army officer, who had gone home and was not available as a witness in the proceedings against the English solicitor who was acting for the accused soldier. The officer had been accompanied at his own request by an English police sergeant, and there was a conflict of evidence about what happened. The girl and her mother stated that the American officer had threatened the girl with two years' imprisonment if she did not give evidence. The police sergeant heard no threats used.

What the solicitor said that he had told her was the simple truth, that she was not obliged to give evidence at the court martial if she did not wish to do so. The learned magistrate held that he had a right to interview the witness ; that all he had done was to allay fears created by threats made (or which the girl and her mother believed to have been made) and that in so acting he was not persuading her not to give evidence, but informing her of her right to refuse to do so. It is a fine distinction, even though the girl informed the magistrate that even before seeing the defending solicitor she had decided she would ignore the threats and would not give evidence at the court martial.

It seems pretty plain that the case arose out of the extra-territorial privilege allowed to the American forces in this country, which brings with it foreign methods of obtaining evidence. A threat to a potential witness of two years' imprisonment sounds incredible, upon the face of it, but it seems unfortunate that, when a decision was taken to prosecute the solicitor who had interviewed the girl afterwards, the American officer was not made available, since anything he had said to the girl from the prosecution side would obviously have had a material bearing upon the propriety of what was later said to her by the solicitor for the defence.

Unjust Reticence

We spoke with regret at p. 162, *ante*, of the unwillingness, tiresome at best and often misleading, of the ordinary newspaper to inform its readers accurately of the nature of criminal proceedings which the editor thinks ought to be reported. It can be argued that papers circulating among persons of all ages and all shades of intelligence had better not report at all the more sordid sexual offences ; it can be argued still more convincingly that at the early stage, when such a case is almost always incomplete, no public benefit results from informing all the world that a named person has been brought before the magistrates. Later stages of the case will, perhaps, not be reported in the newspapers ; if the defendant is acquitted or the charge withdrawn it is more than likely that most of the persons who noticed the defendant's name at the earliest stage will never know that his name has been cleared at a later stage. The chief reason, such as it is, for publishing an account of the first hearing by the magistrates is that publication sometimes leads witnesses to come forward, who had not known about the charge, witnesses whom the defendant's advisers had not been able to discover—in the nature of things it is more likely to be the defence than the prosecution which is helped in this way, because the prosecution has at its disposal the police machinery, which will have been set in motion before a case comes into court. But if the publication of a charge at the first stage is to do any good at all, surely the reader must be told what has been charged ? *The Times* is sometimes prepared to print in its law reports the accepted names for sexual offences, but is at other times just as obscure as the more popular papers. We have before us a short paragraph in *The Times* one day in May (which so far as we have seen has not been followed by any continuation of the story) where it was said by the police that a lad of eighteen " violently assulted a girl of fourteen and then committed a serious offence." Was this sodomy (the crime which the journalist usually masks by this mealy-mouthed periphasis) or rape ? Or perhaps an attempt at one of these felonies? Or the misdemeanour of unlawful carnal knowledge of a girl between thirteen and sixteen, under the Criminal Law Amendment Act, 1885 ? If it is right to tell the world that so-and-so has been accused, surely he has a right that the world shall also be told how grave the accusation is. And, in the name of common sense and common English speech, is the reader to be encouraged to infer that violent assault by a grown man upon a girl of fourteen is not itself a " serious " offence ?

Precept and Example

We spoke at p. 258, *ante*, of the bad example set by the city council of Coventry, in seeking to break up the civil defence arrangements for the city. This was followed by the singular performance staged by one faction in that city, when the midland convoy of the national organization for civil defence was sent there to give a demonstration. It may be that the regional officer responsible was unwise in having a lecture to the citizens put out by loud speakers ; at any rate his zeal for his appointed task earned him a public rebuke from his Minister in the House of Commons, but the demonstration in the streets against his mobile column must have been worked up beforehand. From the national press, it seems that opinion generally has supported the Government, rather than the city council, but it would be imprudent to feel confident about movements of opinion underground. The Government's case for pressing onward is not strengthened by their memorandum issued towards the end of May, which wears the too familiar face of a state paper not inspired by conviction. At the same time, no real purpose is achieved by such a pernickety attack upon the language of the memorandum as was made by the leader writer in *The Times* on May 28. The leader writer's remedy is to appoint a chief of staff for civil defence, but Cincinnatus himself could do no more good than a Minister or a Government Department unless power was entrusted to him, and that is just what in England nobody will do. So long as public opinion insists at the centre upon parliamentary control, which means control through Ministers who dare not give their experts a free hand, coupled with the vesting of executive power in elected local bodies, who may at any moment decide that yielding to communism is preferable to using the new weapons, civil defence is bound to vacillate. Consistently with the accepted English modes of action, we doubt whether civil defence can become thoroughly efficient, and unless something occurs to rouse ordinary people to a sense of urgency, which is something that no further appointments at the centre would ensure, we doubt whether any real progress will be made. There will, however, be nothing done at all unless local authorities do their own part ; as this goes to press, we read in a northern newspaper that the Salford council have decided to follow Coventry's example, and in the *Western Mail* that the rot has spread to Gellygaer. It is just in the industrial areas that civil defence is most required, and it is deplorable that local authorities in those areas are refusing duty.

SURREY QUARTER SESSIONS RECORDS OF THE SEVENTEENTH CENTURY—I

By ERNEST W. PETTIFER

A FOREWORD

Between the years 1931 and 1938 the Records and Ancient Monuments Committee of the Surrey County Council printed and published four volumes containing such records of the County Sessions as were available. The main sources from which the volumes were compiled were the order books of sessions (the official summaries of business done at the sessions), and the rolls (or files) of documents produced in court, such as lists of those summoned by the sheriff, writs or precepts, jury panels, presentments of offences, recognizances, petitions, and so on.

The order books are in English with the exception of the heading of each session which, after the restoration, reverted to Latin. The rolls are entirely in Latin. The minute books of sessions had not been found up to 1938, so that there are few records of the actual trial of those charged with criminal offences, but the abbreviated notes made by the clerk of the peace over many of the entries give a very fair idea of the justices' methods and practice when dealing with their administrative and judicial work. In fact, it may be said that the available records would have been far less interesting but for the numerous notes and comments, usually in terse Latin form, appended by the industrious and efficient clerk of the peace, Mr. Henry Byne.

The indexing of the volumes is, unfortunately, quite inadequate. There is no subject-index, and the index given consists almost entirely of names of persons and places, and only by making copious notes is it possible to obtain a comprehensive view of the really interesting matter contained in these old documents.

On the other hand, the introductions to the volumes, written by the compiler and editor, Miss Dorothy L. Powell, hon. secretary of the Surrey Record Society, and Mr. Hilary Jenkinson, F.S.A., the honorary editor of the Surrey Record Society, are most competent and helpful. In particular, the introductory essay with which vol. 5 (of the Society's records) commences is a masterly outline of the history and evolution of the justice of the peace, and of the development and practice of quarter sessions in the county.

The introduction to vol. 6 continues from the previous volume and outlines the procedure of quarter sessions in the middle of the seventeenth century, such as the summoning of jurors, the opening of the court, the charge, routine administration, constables' presentments and so on through an ordinary sitting of the sessions.

Volume 5 is more in the nature of a preliminary survey of the documentary material available, and carries on through the years until the middle of the nineteenth century, but vols. 6, 7 and 8, cover a period of great historical interest, commencing in July, 1659, just before the Stuart monarchy resumed with the return of Charles II, and ending in January, 1666, with London and the surrounding counties firmly in the grip of the Great Plague.

. . . .

Some history books give the month of October, 1665, as the month in which the plague commenced. This may have been the month in which it was realized by the authorities that this was no ordinary outbreak, but the Surrey justices can have been in no doubt for a considerable time before 1665 that the plague had returned, and that it was gaining hold for some years previously to an unusual extent. So early as September, 1661, the Reigate sessions received an appeal from those justices who usually sat at Southwark that, " by reason of the general disease and sickness " then abroad, their work had " in a most extraordinary manner increased, and the wants of divers poor and sick families " were so great that they could not relieve them and that many were in daily hazard of perishing in their sickness for want of succour. The justices asked that special measures might be taken by sessions.

At the Croydon sessions of January, 1663, a man was charged with dividing three old houses at Bermondsey into six separate habitations, and allowing six families to occupy them " to the great danger of infecting the inhabitants of the parish with the plague." Numerous similar cases were brought before the justices both before and after this date, all showing that overcrowding in the districts around London was recognized as a serious factor in the spread of plague and other diseases. (On June 7, 1665, Samuel Pepys made his first sombre note upon the plague in his *Diary*—" This day, much against my will, I did in Drury Lane see two or three houses marked with a red cross upon the doors, and ' Lord have mercy upon us ' writ there ; which was a sad sight to me, being the first of the kind that to my remembrance I ever saw." From this note it is clear that official precautions were already being taken.)

At Guildford sessions on July 11, 1665, there is a significant entry, significant because it shows that the exodus from London was already assuming large proportions, but also interesting because it records the fact that Epsom was then renowned for its medicinal waters. The first part of the entry runs : " Whereas since ye sad visitation of ye plague within the city of London and ye places adjoining, it hath beene observed that there hath been a great resort and confluence of people from ye said city to ye parish of Epsham under color and pretence of drinking ye waters there, and by that meanes it is too justly to be feared that the infection may be brought not onely to ye said parish but to ye parishes and places adjacent and to ye parishes on the road from London." . . . The minute proceeded to record that the justices had asked Mr. Richard Evelyn, a justice present in court, he being the Lord of the Manor of Epsom, to shut and lock up the wells ; to prevent any strangers coming to them, and to stop coach-loads of people from the city being unloaded there. Constables and headboroughs were directed to keep strict watch and to ask Mr. Evelyn to bind over any offenders.

Four entries appear in the records of the Dorking sessions of October 5, 1665. The first sets out a letter from George Monck, Duke of Albemarle, in his capacity as Lord Lieutenant of the borough of Southwark, describing the lamentable condition of the inhabitants owing to the virulence of the pestilence. (The Duke of Albemarle, we know from history, played a courageous part not only in Southwark but also in the city in organizing the measures taken for dealing with the plague.) The Surrey justices responded to his appeal by making an assessment on all parishes not yet afflicted, but those parishes already infected were exempted from this assessment. Fourteen parishes are named in the minute as themselves in distress, including, in addition to Southwark, the quarter sessions towns of Kingston, Reigate, Chertsey and Croydon. It was further ordered that all sums raised by this assessment should be paid to Mr. Henry Byne, the

clerk of the peace, at his house at Carshalton, and be disbursed by him from there. It is possible that Mr. Byne may have had his own views upon this arrangement, and that he may have had some misgivings as he visualized a succession of collectors visiting his house, all of them possible carriers of disease.

At the same sessions the case of a child ordered to be removed to Southwark came before the court, and the justices ordered that, having regard to the "contagion within the borough of Southwark," the child's removal should be deferred. A justice reported that, following a complaint that a Worplesdon husbandman had been forcibly ejected from his house by several men and women, he had visited the house, found the defendants still in possession, and had arrested them and made orders of committal to Southwark gaol. Later that morning (October 5, 1665) several Guildford people made representations to the justices that it would be most dangerous that the defendants should be committed to Southwark "owing to the plague then raging there" and offered to be bound in £50 each to produce the prisoners at any time when directed by the justices. The offer was accepted, and the prisoners were handed over to their friends.

A constable presented the same day for failing to execute a justices' warrant to remove several persons from an overcrowded house at Carshalton "according to the several orders made by His Majesty's Privie Counsell for the prevention of the spreading of the Plague," and to convey them to London, was fined 13*s.* 4*d.* It is probable that the erring constable regarded the sum of one mark as a very reasonable price to pay for escaping a visit to London. (The weekly death roll at that time was between 6,000 and 7,000.)

At the Dorking sessions held on January 9, 1666, the justices refused to admit to the court a large number of persons presented by the surveyors of highways of Croydon, but directed that, "having regard to the visitation now continuing and spreading at Croydon" they should present themselves to the surveyors, pay the highway charges for which they were in arrear, and the fees of the court, and so be discharged. The reason given in the minute of the justices is that, had they allowed these persons to appear in court, it might have led to the spreading of infection. With a thousand dying each day in London alone, watchmen sitting outside the doors bearing the red crosses, and the long columns of the dead-carts making their dreadful rounds as night fell, there were few who did not realize at last how vital it was to avoid infection if possible. The justices were already running grave personal risks as they sat in their small court-rooms, crowded with jurors, constables, defendants and witnesses.

And no one knew better than the justices the causes of the periodic outbreaks of pestilence. The long lists of offences against public health which they dealt with at every session left them in no doubt as to why, when an outbreak of disease took place, it could not be stayed until it had claimed its toll of victims. The scavenger frequently figures in cases before the court. Sometimes he was the informant against batches of inhabitants; on other occasions he was himself presented for not carrying out his duties. He was a part-time officer, engaged in some other occupation and giving only his spare time to the task of cleansing the streets. A man called a raker, the forerunner of the present-day road sweeper, was probably engaged in raking into heaps the filth with which lanes, streets and highways were choked. It was the task of the scavengers to dispose of these heaps. It would seem that the accumulations were merely carted to open ground and tipped there.

Many houses had no privies and everything was tipped into the street. Enterprising people established "houses of office," presumably by way of turning an honest penny, and duly appeared before the justices for erecting these places of retirement on the public highway! One woman was fined 1*s.* for utilizing a well for the purpose.

Some of the many cases of depositing "dunghills" or "dung heaps" on the highways were, probably, due to efforts made to get rid of accumulations of ordure from backyards. Backyards, apart from their use as dumps for household refuse, were used for other unpleasant purposes, such as keeping forty pigs and feeding them on sheeps' entrails "whereby a contagious odour at times rises and the air is much corrupted thereby . . . to the grave nuisance of those dwelling near and against the peace, etc." A Reigate man kept 200 or 300 fowls in a barn and fed them with "livers, lights and other offals thus annoying his neighbours and passers-by, and giving occasion for divers diseases if not timely removed." (Ordered to remove the fowls within two days.) Jane Patchinge "of Binescombe in Godalming, widow, kept in her yard or backside a burying place for the dead." So the unsavoury story runs, page after page. Sewers were cleaned out but the mud and filth were placed on the highway; if a horse died what better place for its carcase than the highway?: and the tanner was bound to dispose of the noxious fats from his hides, so the Kingston tanner tipped the lot daily into the Hogs Mill River which, not surprisingly, "had become corrupt and unhealthy"!

(*To be continued*)

"WHAT OF THE NIGHT?"—II

By J. A. CÆSAR

(*Concluded from p.* 372, *ante*)

In addition to the four different statutory definitions of "night" described in the first part of this article, a fifth (and different again) was referred to in an earlier article appearing at 118 J.P.N. 101 in relation to the parking of vehicles on roads during the hours of darkness.

The "hours of darkness" for this latter purpose are the same as those prescribed by s. 1 of the Road Transport Lighting Act, 1927, in relation to the lighting of vehicles on roads, *viz.*, the time between one hour after sunset and one hour before sunrise during the period of summer time and between half an hour after sunset and half an hour before sunrise during the remainder of the year.

At this stage it might be opportune to recall that "whenever any expression of time occurs in any Act of Parliament . . . the time referred to shall, unless it is otherwise specifically stated, be held . . . to be Greenwich mean time" (Statutes (Definition of Time) Act, 1880), and that, by virtue of the Summer Time Acts, 1922 to 1925, "the time for general purposes in Great Britain shall . . . be one hour in advance of Greenwich mean time . . . for the . . . period beginning at two o'clock, Greenwich mean time, in the morning of the day next following the third Saturday in April, or, if that is Easter Day, the day next following the second Saturday in April, and ending at two o'clock, Greenwich mean time, in the morning of the day next following the first

Saturday in October " in each year ; moreover, under s. 1 of the Summer Time Act, 1947, " double summer time " (two hours in advance of Greenwich mean time) can be introduced by Order in Council for such period as may be prescribed therein in lieu of the period of ordinary summer time fixed by the Acts of 1922 and 1925, but nothing in the 1947 Act or in any Order in Council made thereunder is to affect the meaning of the " period of summer time " as used in s. 1 (4) of the Road Transport Lighting Act, 1927.

It should also be borne in mind that neither "sunset" nor " sunrise " is an " expression of time " within the meaning of the Statutes (Definition of Time) Act, 1880, and that both terms are references to particular facts which may have to be proved by evidence of practical observation at the times and in the different localities in question (*see, e.g., Gordon* v. *Cann* (1899), 63 J.P. 324).

Whilst on this aspect of the matter a brief reference to the civil law might not come amiss. A distress for rent (but not, it seems, distress for damage feasant, since the beasts in question might run away) must not be made " after dark " (*Aldenburgh* v. *Peaple* (1834), 6 B.P. 212) or " after sunset " (*Lamb* v. *Wall* (1859), 18 Digest 310, 457; 1 F. & F. 503) or (even though there be " daylight ") " before sunrise " (*Tutton* v. *Darke*, *Nixon* v. *Freeman* (1860) 5 Ho. N. 647 and 652, 18 Digest 310, 458), and, where the time is material, it must be proved like any other fact since the court does not take judicial notice (criminally or civilly) of the hours (as opposed to the days) of the calendar (*Collier* v. *Nokes* (1849) 2 Car. & Kir. 1012, 18 Digest 310, 459) ; *Tutton* v. *Darke*, it will be noted, left it in doubt whether, for this purpose, the time of sunrise is to be reckoned from " the first appearance of the beams of the sun above the horizon " or from " when the entire sun has emerged " and whether such time is to be determined by practical observation rather than astronomically.

Before leaving the question of distress for rent it is interesting to recall that a landlord who prevents removal by a third party so that he may distrain in the morning is not guilty of conversion although he may be liable to an action in trespass (*England* v. *Cowley* (1873), 18 Digest 311, 460 ; 8 Ex. 126).

Returning for the moment to " highways " it is of further interest to note that under s. 56 of the Highways Act, 1835, which section provides for a penalty on a surveyor " allowing any heap of stone, etc., to remain on a highway at night," the " night " may be presumed to begin at least as early as seven o'clock in the evening of the month of November (*Hardcastle* v. *Bielby* (1892), 1 Q.B. 709) ; the expression is not, however, defined for the purposes of the Act of 1835, nor is there a statutory definition of " night " which is of general application for the purposes of the Towns Improvement Clauses Act, 1847—ss. 79-81 of the 1847 Act, it will be remembered, require certain works, etc., to be " lighted at night " (*see* article at 117 J.P.N. 581), and, for the purposes of s. 81 at least, it would appear that the " night" is to be deemed to be the period " from sun-setting to sun-rising."

On the other hand, as regards the " lighting and guarding of street works " in the Metropolis, Part III of the London Traffic (Miscellaneous Provisions) Consolidation Provisional Regulations, 1934, defines " night " as " the period between half an hour after sunset and half an hour before sunrise " (which is the Road Transport Lighting Act definition of the "hours of darkness " for other than the " period of summer time ") and includes, also, "any period of fog or abnormal darkness"—a measure of justification, it seems, for Portia's suggestion that " the night . . . is but the daylight sick ! "

During the last war the restrictions on lighting imposed by S.R. & O. 1939 No. 1098 (made by the Home Secretary under Defence Regulation 24) applied " from sunset to sunrise."

For the purposes of the Baking Industry (Hours of Work) Act, 1938, " night " seems to be the period between eleven *p.m.* and five *a.m.*, whereas for certain of the purposes of the Shops Act it appears to be " a period of at least eleven hours including the interval between ten *p.m.* and six *a.m.*" (a definition which might be presumed also to apply to the Factories Acts, but which varies from that contained in the Act of 1920 quoted in the Practical Point which gave rise to this article, and varies still further from the definition in the (repealed) Factory and Workshop Act, 1901).

Now it is not proposed to proceed further with the listing of all the various other enactments wherein are contained prohibitions against, or restrictions upon, the doing of certain acts at night or during the hours of darkness ; nor is it proposed to refer to any such prohibition or restriction as can be imposed by the licensing justices or by local or other authorities as conditions of the grant of licences, etc. It may be mentioned, however, by way of final illustration, that the playing of billiards on a " public billiards table " is statutorily prohibited between the hours of one *a.m.* and eight *a.m.* (s. 13, Gaming Act, 1845), that a " refreshment-house " licence is not required under the Refreshment Houses Act, 1860, if the premises in question (not being licensed under the Licensing Act) are not kept open between ten *p.m.* and five *a.m.*, and that, under s. 8 of the Old Metal Dealers Act, 1861, a registered dealer in old metals is prohibited from purchasing or receiving, by himself or through an agent or servant, " any old metals of any description" between six *p.m.* and nine *a.m.*

Nine *p.m.* to six *a.m.*, sunset to sunrise, an hour after sunset to an hour before sunrise, half an hour after sunset to half an hour before sunrise, eleven *p.m.* to five *a.m.*, ten *p.m.* to five *a.m.*, ten *p.m.* to six *a.m.*, six *p.m.* to nine *a.m.*, and so on—is it to be wondered at that in answer to Macbeth's question "What is the night ? " Lady Macbeth replied " Almost at odds with morning, which is which ? "

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COMPREHENSIVE SCHOOLS

THE COMPREHENSIVE IDEAL

[CONTRIBUTED]

Under the Education Act, 1944, the statutory system of public education is organized in three progressive stages to be known as primary education, secondary education, and further education[1]. At present there are four established types of secondary schools : grammar, central[2], technical and modern. Some local education committees, in a laudable if over-zealous desire to foster the idea of " parity of esteem," go so far as to instruct their officials not to use the " old " terminology and to use the description " secondary " as a blanket term. Thus a grammar school may be described as a secondary school providing an academic course up to the age of eighteen, and a modern school as a secondary school providing a course until the statutory school leaving age[3]. This egalitarian approach has given rise to the comprehensive ideal, which is the current hobby-horse of certain political " educationalists."

What, then, is a comprehensive school and where are such schools to be found in this country ? The second question is the easier to answer : there are comprehensive schools in Anglesey, Coventry and Birmingham and in the counties of London and Middlesex. The comprehensive system of secondary education is now part of the official policy of the Labour Party, but before discussing the political implications a definition should be attempted. According to Mrs. Margaret Cole, L.C.C.[4] " the idea of a comprehensive high school is that it shall cater for all children from the age of eleven-plus to the time when they leave school." She excepts handicapped children needing special education and " the minority who will *at present* (my italics) continue to go to the various kinds of independent and voluntary schools which will still exist." At this stage it can be discerned that social policy underlies the philosophy of the comprehensive high school. The arguments in favour of the comprehensive system include some of great moral force, for example that it will militate against social and class distinctions by bringing all the children of a particular neighbourhood together in one school community, irrespective of any " grammar," " technical " or " modern " label or tag. The appeal of such a policy to socialists and liberals is obvious, but unfortunately many enthusiasts leave the matter there, and do not consider the practical difficulties inherent in the system or, indeed, that it may be inimical to a valid concept of education by destroying what is good. It is a true saying that a little knowledge is a dangerous thing, and this applies particularly to education. It is noteworthy that neither the late Ellen Wilkinson or the late George Tomlinson favoured the comprehensive system, whilst the present Minister of Education has made a courageous stand against its most recent manifestation. The bulk of the teaching profession and of education administrators are against the comprehensive system and so is local opinion[5] when the specific issue arises. It is now proposed to examine the actual methods of teaching envisaged in the comprehensive high schools in order to illustrate the theory more fully.

It should first be explained that the size and organization of comprehensive schools will vary. In London the sizes will range from 1,200 to 2,000 and there will be some mixed comprehensive schools, some for boys only and some for girls only. At present the L.C.C. does not contemplate the abolition of the common entrance test, but abolition of "the eleven-plus examination " is now official Labour policy[6] and would appear to be a logical corollary of the comprehensive system. In any event, the theory is that the vast majority of the children in a given area will go to the local comprehensive high school and there be given instruction according to their age, aptitude, and ability, whatever classification they would otherwise have received. The actual teaching is to be organized so that the pupils receive instruction in which they are interested and show aptitude. The problem has been expressed to be " to organize the schools in forms for teaching purposes so that pupils of different abilities have some opportunities of working together and . . . so that each pupil may be given every opportunity of working to the full extent of his capacity."[7] Thus children will not always have the same class master and extremely complicated timetables will have to be prepared by headmasters and headmistresses. In passing, one wonders whether the abolition of the promotion examination will not, after all, hinder the development of the system, since there must be a measure of sorting the sheep from the goats in the interests of smooth organization alone. It appears that this enormous burden of classification will eventually devolve on the primary schools, with subsequent adjustments in the comprehensive high schools as they are found to be necessary. An attempt is made to minimize the effect of the size of the comprehensive schools by the use of the tutorial and house systems, so that smaller communities within the schools may be established. The aim of the L.C.C., at any rate, is that the houses should be composed of pupils as mixed as possible in age and ability. The unity of the school, on the other hand, is to be provided for by frequent assemblies, and such corporate activities as games, concerts, camps, etc.

Whilst the admirable inspiration behind the comprehensive ideal can be recognized, the fact remains that the comprehensive high school is by its very nature experimental. This the partisan zealots refuse to realize and, indeed, the Chairman of the Education Committee of the London County Council has refused to give the writer an assurance that the L.C.C. will be satisfied with the large number of comprehensive high schools postulated in the London School Plan, and that the London voluntary-aided grammar schools will remain inviolate. Reference has already been made to the possible destruction of what is good in education. The Labour Party may or may not be right in its general bias against the public schools, but if it is right it should have the courage of its convictions and abolish them as breeding-grounds of class distinction and snobbery, rather than extend their alleged benefits to all classes by awarding certain pupils assisted places as some Labour controlled councils have done. What is certain, however, is that the destruction of the voluntary-aided grammar schools would be a wanton and shameful act most injurious to the cause of education as a whole.

At present voluntary-aided grammar schools cannot be converted into comprehensive high schools against the will of the school governors. It should here be interpolated that the current London practice is to base a comprehensive school on a county grammar school[8] if possible. In the case of the

[1] Section 7.
[2] Rarely encountered outside London.
[3] At present fifteen.
[4] The London Plan in Practice—3*d*.
[5] *e.g.* Parents' Associations.
[6] " Challenge to Britain."
[7] The Organization of Comprehensive Schools, L.C.C. publication 1*s*.
[8] A County School is one built and maintained by the local education authority.

voluntary-aided grammar schools " county complements " are substituted for comprehensive high schools, and they will provide sixth-form work of a more practical character than that usual in grammar schools. The hope is that they will work in association with, and be complementary to, the voluntary-aided schools. In present circumstances the headmasters and headmistresses of voluntary-aided schools are being coaxed into co-operation with the county complements. It is earnestly to be hoped that, if the desired co-operation is forthcoming, the reward will not be ultimate extinction. The present aim of the L.C.C. is to foster the development of common activities between the two types of school and such an aim is, of course, unexceptionable in itself.

Let us now consider the special contribution made by the voluntary-aided grammar school to the cause of education. In the first place it should be recalled that before the Education Act, 1944, there were very few free places at voluntary-aided grammar schools, whose pupils were mainly fee-payers. In common with the county secondary schools all places at the voluntary-aided schools are now free. How does the standard of education at a voluntary-aided grammar school compare with that at an ordinary county grammar school? The acid test is to be found in public or local opinion, which almost invariably prefers the voluntary-aided school. The reason is that a voluntary-aided school is usually an old foundation with high traditions which attract first-class teachers. This is not to denigrate the county grammar schools or their staffs, which do excellent work, but merely to state a fact. The buildings of both types of school are maintained and kept in repair by the local education authority but new work and extensions are the responsibility of the governors of voluntary-aided schools, whose dwindling funds they administer. It is here that the politicians may eventually have the whip-hand, since undoubtedly in many cases the attraction of a brand new building may outweigh all other considerations. Even where an old building is being used as a nucleus the effect of extensions and special facilities made available on policy grounds may have a similar effect. Nevertheless this point has not yet been reached and in fact any county grammar school destined to become a comprehensive school suffers a marked decline in popularity.

The proponents of the comprehensive system suffered a reverse recently in connexion with the establishment by the L.C.C. of the Kidbrooke Comprehensive High School for Girls in Greenwich. The London School Plan provided for the closing of Eltham Hill High School for Girls[9] in 1957, in connexion with the establishment of a comprehensive high school in that district. The L.C.C., however, decided to advance the closure of the Eltham Hill School to coincide with the opening of the new Kidbrooke School in September, 1954, and went ahead with its plans on that basis. The closure of Eltham Hill High School, however, required the sanction of the Minister of Education and this had been regarded in certain elevated quarters at County Hall as a mere formality. Miss Florence Horsbrugh, however, to her eternal credit, announced on March 2 that she had refused to approve the closure and there is, therefore, a stay of execution for at least three years. This does not mean that Kidbrooke School will not open in September but merely that its strong grammar school nucleus will be absent. The effect may be that the School will not be fully comprehensive for some time, and that it may be in fact something of a " white elephant " interim comprehensive school. Opinions differ as to the number of grammar school children who will in fact transfer to Kidbrooke School, but some interesting light has been thrown on the whole subject by a letter from Miss I. B. Ozanne, Headmistress of Eltham Hill High School from 1931 to 1952, in the *Times Educational Supplement*[10]. Miss Ozanne makes the following points :

1. The staff of Eltham Hill School were offered no opportunity of expressing any opinion on the proposed closure but it was open to any one of them to seek a post in another grammar school rather than accept transfer to Kidbrooke. Three mistresses chose to do so, but the rest decided to remain with their pupils, as they felt that the upheaval would be less serious if Eltham Hill School moved as a unit.

2. It has been pointed out that only twenty-six parents chose to transfer their daughters to other grammar schools in July, 1953, rather than allow them to go to Kidbrooke and it has been inferred that the other parents were content. This was not so ; a very large number of parents expressed dismay at the impending change but they were told that the headmistress and staff would stay with the girls and that individual transfer to another grammar school might mean a more serious break for a girl than moving to Kidbrooke with her form-mates and accustomed teachers. The greater number of parents accepted this view, only twenty-six still preferring to remove their daughters altogether.

3. It would seem that the parents of pupils who might have entered Eltham Hill School in September, 1953, were also affected by the Kidbrooke scheme. In the past the parents of well over a hundred girls at the age of eleven-plus put Eltham Hill School as their first choice : in 1953 fewer than thirty did so.

4. When the Minister's decision was known every member of the staff but one decided without hesitation to remain at Eltham, many of them renouncing higher salaries available at Kidbrooke. Only four parents have chosen to ask for transfer of their daughters to Kidbrooke.

5. It has been said that the petition sent to the Minister was a political move. The parents who organized the protest were stirred by educational considerations alone, and the proposed closure of Eltham Hill School was deeply deplored by many people of all parties. The staff, in accordance with accepted professional standards, took no part whatever in this protest.

Four factors stand out in the Kidbrooke and Eltham Hill affair : the strength of local feeling in favour of the *status quo*, the loyalty and high professional standards of the teaching staff involved, the intransigeance of the L.C.C., and the courageous decision of the Minister. Much confused thinking caused by misrepresentation of the facts is set right as regards the supposed enthusiasm of parents, teachers and children for the new Kidbrooke School in the letter of the former Headmistress of Eltham Hill School. She also amply demonstrates the difficult position in which the teaching staff were so arbitrarily placed and her tributes to their conduct are doubtless well deserved. The controversy that has arisen in South East London as to whether there should be a comprehensive high school in that area has ended in its establishment, but the debate continues and it is by no means certain that the policy of comprehensive education will be continued in London indefinitely[11].

It is of interest to note that the original proposal in " Challenge to Britain " was that the new (comprehensive) secondary schools should cater for children up to the statutory school-leaving age, and that those who remain at school after (the age of) fifteen would move on to high schools. This proposal was amended at the Labour Party Conference last year in the sense that comprehensive schools should provide for education up to the age of eighteen. The effect of the amendment would be that the vast majority of pupils would leave the comprehensive schools

[9] A County Grammar School.

[10] Friday, April 16, 1954.

[11] The next L.C.C. elections take place in April, 1955.

at the statutory school-leaving age (at present fifteen), leaving a small number at the schools who would leave at any age between fifteen and eighteen. The amendment is less realistic than the original proposal and its sponsors were obviously unaware of the great drift from the schools at the age of fifteen today. There is a relatively high minority of premature leavers from the grammar schools at present. This is due to a combination of factors: the high cost of living, the inadequacy of maintenance allowances[12], the attraction of high wages for adolescents in urban areas and, in some cases regrettably, lack of parental purpose and appreciation. In the L.C.C.s pamphlet "The Organization of Comprehensive Secondary Schools," the hope is expressed that an increasing number of pupils who now go to secondary modern schools will, in a comprehensive school with its wide range of opportunities, stay on beyond the age of fifteen. In the light of the present writer's experience in attempting to persuade numerous parents to take advantage to the fullest extent of free grammar school education provided for their children, this can be regarded as merely a pious hope.

The administrative problem posed by the comprehensive system is serious, and materially affects both teachers and education administrators. In the first place it is clear that a headmaster or headmistress of a comprehensive high school will do very little, if any, teaching and will in addition be assisted in a large volume of administrative work by a full-time secretary, in the case of the L.C.C. at least, an officer of senior administrative status. It is true that in some large existing secondary schools headteachers do very little teaching and this is even the case in some primary schools. Nevertheless the tendency is to be regretted and it will obviously be extended in the comprehensive schools by the sheer size of the buildings and numbers of children. Careful planning of the curriculum, in itself likely to be extremely complicated as already indicated, will be essential as much time could otherwise be lost in changing classes. It is not surprising, therefore, that the L.C.C. will require the headmaster of a comprehensive school to be an outstanding person. "He will need to have not only great organizing ability, first-rate teaching power, vision and originality, but also a personality congenial alike to staff and pupils. If he is to be able to devote himself to the things that are of first importance, he will need to delegate to others, and notably to his deputy and to his senior administrative officer, whole spheres of work ordinarily covered by the headmaster himself in a small secondary school."[7]

There are several aspects of the purely administrative problem which may prove to be intractable, and which will affect other public services, for example, transport. From the point of view of the education administrator in a divisional office, the concentration of large numbers of children in a single school building may prove to be administratively convenient, for the purpose of issuing free transport passes to those eligible for them. The public transport system however, may undergo a severe strain if at particular points some two thousand children are unleashed simultaneously at four o'clock. It may be argued that, as the pupils will be drawn from a wide area, they will not all be at one bus stop: this is a crumb of comfort but considerable congestion can be forseen just before the rush-hour. At present some schools finish for the day at half-past four; school hours, like school closures, are subject to local variations not merely within the same county but also within the same borough or division. It may be that, when all secondary education is comprehensive and everything and everyone is standardized, such local variations will disappear. In any case it is submitted that the difference of half an hour will hardly make much difference to the congestion. If the comprehensive system really gets under way, local education authorities may find it necessary to run their own transport for all secondary school children. This would severely counterbalance any material saving in administrative costs arising out of the concentration of children in large school buildings.

The organization of school meals will also present difficulties under the comprehensive system. At present a fair number of secondary school children go home to dinner, but in the large catchment areas to be served by the comprehensive schools it will be physically impossible for large numbers of children to travel home to dinner and return to school in an hour and a half, the usual school mid-day break. Once again, it might be more administratively convenient for the divisional office to have, for example, meals supervisors previously scattered between five or six schools concentrated in one building. In London meals supervisors are at present paid on a sessional basis and are given a free meal, to be consumed outside the time in respect of which they are paid. The organization of school meals in a comprehensive school will be a much greater task than in an ordinary primary school and may therefore entail an extension of meals supervision duties to secondary schools with a corresponding increase in administrative costs. Once again, therefore, any savings arising out of the concentration of children in large buildings may be dissipated and exceeded by greater expenses arising out of that very concentration.

In conclusion a word should be said about the actual school buildings. In many cases the new comprehensive schools will be, appropriately enough, housed in brand new buildings: such will be the case, for example, in London at Kidbrooke in the south-east and Woodberry Down in the north-east. In other cases, where the comprehensive school is to be based on an existing county grammar school, large extensions to the old buildings are necessary. In the case of the county complements new but smaller buildings are required. Irrespective of the merits or demerits of the comprehensive policy, this will clearly have the effect of releasing the old technical, central, and modern school buildings for further education purposes and to that extent will be beneficial. On the other hand it may be questioned whether the enormous expense of building comprehensive schools is justifiable. The whole matter is a question of priorities and it is suggested that expenditure on new primary and special schools, increased maintenance allowances, and free travel facilities should come first. The present writer is firmly of the opinion that the establishment of comprehensive schools should be purely on an experimental and empirical basis. The entire secondary education policy of the greatest local authority in the world should not be staked on an untried, unproved theory (even the enthusiasts fight shy of the American analogy). What will happen to the fine new buildings if the comprehensive system proves to be a failure? What will happen if the system breaks down in spite of the loyal efforts of teachers and administrators to make it work? The county councillors concerned should devote their earnest attention to these questions before it is too late and before they have given too many hostages to fortune.

[12] "Challenge to Britain" mentions standardization of maintenance allowances.

BOOKS AND PAPERS RECEIVED

Portrait of Josephine Butler. By A. S. G. Butler. London: Faber and Faber, 24, Russell Square, W.C.1. Price 21*s.* net.

Archbold's Criminal Pleading, Evidence and Practice. Thirty-Third Edition. Second Cumulative Supplement. London: Sweet and Maxwell, Ltd., 2 and 3, Chancery Lane.

MISCELLANEOUS INFORMATION

LOCAL GOVERNMENT AND ITS CRITICS

This was a title of a paper by Mr. D. N. Chester, C.B.E., Warden-Designate of Nuffield College, Oxford, at the annual conference of the Association of Municipal Corporations. Referring first to the demands which are being made by the associations of local authorities for a re-organization of local government he thought that Mr. Bevan made a courageous and sensible decision when he decided to abolish the Local Government Boundary Commission which " went far beyond the purpose for which it was originally established, and was not well suited for its self-appointed task." He believed some changes will be needed in the not too distant future, but did not think the position was so serious as some reformers suggest. He suggested that local government did not get enough publicity for the good work which it does, and in this connexion expressed the opinion that the local authority associations have neglected this side of their responsibilities. On the loss of services in the last few years from local to central government, he said the only loss he regretted was the hospital service, and he hoped this would come back in the near future. In his view, it is wrong to assume that because a service starts by being handled by local authorities it must remain with them in perpetuity. Through private Bill legislation local authorities have done pioneering work by providing some form of special service before national opinion was ready for it, and later this has often developed into a general power applying to the whole country. As to alternative forms of public administration, Mr. Chester suggested that criticism has been obsessed with the problem of areas—usually in statistical terms. He thought there should be detailed internal studies of the working of different sized local authorities, of the administration of particular services or even of what has happened upon the transfer of a service.

Perhaps the most interesting part of Mr. Chester's paper was that in which he referred to " the supply of elected representatives." He said that contrary to popular belief there are many more candidates for election now than there were at the beginning of the century, according to the Registrar-General's *Statistical Review*, and there are more contested elections, due no doubt largely to the coming of the Labour Party into local politics. On the suggestion which is sometimes made that the calibre of those elected is not so high as in earlier years, he pointed out that this is difficult to determine, but many things may prevent more able people from serving as councillors such as alternative opportunities for service. He thought, however, there was much to be said for using the right to elect aldermen from outside the council to ensure the presence of a certain number of able and outstanding citizens, who are not actively party-political or who are even political opponents of the strongly entrenched majority. We doubt whether this view, sensible as it is, will receive much support. He thought the main problem was to find chairmen and vice-chairmen of certain very important committees, and that the supply of councillors is much greater than the supply of potential chairmen. He wondered if enough attention was being given to the importance of getting for this purpose leaders of well-above average ability and with sufficient time to devote to the work, and if the best use was being made of the limited time of the elected representatives. Some members seem to find it more congenial to devote their attention to small points of detail than to deal with major issues of general policy. He discussed the general question as to whether more of the detailed work should be left to officials but, perhaps from his experience as a member of the Oxford city council, he seemed to be against this. As he agreed, however, the position of the member, and the chief official, of a very large authority must necessarily be very different to that of a small, or compact, authority. He concluded that those wishing to reform local government should not embark on any increase in the size of areas unless they are quite sure that the change can be made without reducing the number of people of the right calibre, willing and able, to give sufficient time to being councillors on those bodies and, in particular, to being chairmen and similar leaders ; and further that the change can be achieved without seriously reducing the present significant role of the elected representative in the decision-making process.

ESSEX PROBATION REPORT

As in many other reports, we find in the report of Mr. S. R. Eshelby, principal probation officer for the county of Essex, the welcome statement that an examination of the year's statistics seems to show a downward trend in probation cases, in keeping with the decrease in crime. In Essex this is partly offset by some increase in supervision cases and after-care cases, particularly those from approved schools, and the rapidly increasing population of the county. Whilst there is little change compared with 1952 in the number of men and women supervised on release from Borstals or prisons, there has again been an increased number of boys and girls released from approved schools whose after-care has been undertaken by probation officers. This, says Mr. Eshelby, is a welcome development, in keeping with the views on the subject expressed by the committee a few years ago. Matrimonial work, however, has shown a tendency to decrease, in spite of the increase in population, the figure for 1951 being 678, that for 1952 being 610, and for 1953 being 557. The overwhelming majority of the cases continue to seek the help of the probation officer direct, without making application to the court. On the subject of social inquiries and reports, Mr. Eshelby says : " The number of social inquiries in cases of adult offenders still remains disappointingly low. In most courts in the county there is a reluctance to call for a social report by the probation officer before sentence. This is a handicap both to court and probation officer. Without a report the court more often than not sentences knowing all about the offence committed, but with inadequate knowledge of the *person* who committed the offence . . . It cannot, however, be too strongly averred that the object of the probation officer in making these investigations and reports is not to defend or seek mitigation for the offender, neither is it to seek additional names to his list of probationers. What he does seek to do is to make a careful and impartial investigation of the character and social circumstances of the accused, and present an objective and unbiassed report so that the court is fully informed of the history, environment and what kind of person they are dealing with."

Probation officers are attached to courts, but much of their work is not directly associated with the court, and it is often an advantage for them to be engaged as social workers in surroundings which do not emphasize their official character. This report records an interesting development in connexion with the health centre at Harlow New Town, which Mr. Eshelby believes to be a pioneer of its type. It is used by a number of local general practitioners. By courtesy of the county health committee and Harlow New Town Corporation, the use was obtained of a room at the health centre by the probation officers at certain hours. Apart from the convenience of this arrangement to the probationers and the public, says the report, a further advantage is the very happy working relationship which is growing between private doctors in the area and probation officers—to everybody's benefit, not least that of the patient or client.

NATIONAL ASSOCIATION OF JUSTICES' CLERKS' ASSISTANTS

The sixteenth annual general meeting was held recently at the Grosvenor Hotel, London, S.W.1. The Mayor of the City of Westminster, Alderman Charles P. Russell, C.V.O., J.P., extended a civic welcome to the meeting, and the guests of the meeting were Mr. A. Marshall, President of the Justices' Clerks' Society, Miss Bartha de Blank, Honorary Secretary of the Central Council of Magistrates' Courts Committees, and Mr. J. F. Madden, Organizing Secretary of the Magistrates' Association.

Mr. H. Harris (Liverpool) was re-elected President, Mr. H. M. Bray (Brentford) was elected Vice-President, Mr. Alexander Brimelow (Doncaster) and Mr. R. F. Goldsack (Hastings) were re-elected to the respective offices of honorary secretary and honorary treasurer, and Messrs. Geeson (Newcastle-on-Tyne) and Priest (Sutton) were re-elected to the council.

It was announced that under the terms of a resolution adopted by the Central Council of Magistrates' Courts Committees a joint negotiating committee for justices' clerks' assistants had been established. The employers' side would consist of eight members of the Central Council with four alternative members, and the employees' side would consist of eight members of the National Association of Justices' Clerks' Assistants with four alternative members. The functions of the joint committee would be to consider from time to time salary scales and general conditions of service of justices' clerks' assistants and clerical staff employed by magistrates' courts committees in England and Wales.

A resolution providing for each member of the association to have the opportunity of exercising a postal vote on the election of national councillors was adopted by the meeting, and a resolution providing for each branch of the association to be represented on the national council was defeated.

LOCAL GOVERNMENT LEGAL SOCIETY

By courtesy of the Lord Mayor and corporation of Manchester, the Local Government Legal Society recently held their annual provincial meeting at the Town Hall, Manchester. In the absence of the Lord Mayor, the members of the Society were welcomed by Alderman Richard S. Harper, J.P. Professor W. J. M. Mackenzie, M.A., LL.B., Professor of Government at the University of Manchester, then gave an address entitled " Research in Local Government," at which the chairman of the Society, Mr. E. R. West, presided.

Professor Mackenzie said that the question of research as applied to local government had been much in his mind recently. A certain amount of research was inseparable from the ordinary day-to-day routine administration of a local authority: relevant facts had to be got out for committees and inquiries and so on, based on the best evidence available in the time, and they had to be presented in a skilled and attractive manner and had to be able to withstand cross-examination. He thought that in general the great local authorities had the staff to do this, but he wondered whether there was some need for a consultative agency to help smaller authorities to present their cases, much as a parliamentary agent keeps local authorities on the right lines in his own special subject. It was true that in this country there were some research institutions connected with local government, such as the Royal Institute of Public Administration, and some universities were beginning to take an interest in local government, though the time had not yet come when interchange of staffs was common. But developments in this direction had gone much further in the U.S.A. There was a close association at a single centre between the organs of local government and the research agencies. At the head was the Public Administration Clearing House, more commonly known as "1313" from its number in East 60th Street, Chicago, where some twenty associations of authorities and officials shared the same building. This also housed the Public Administration Service, which was in effect a business consultancy. Moreover there was a very close connection between "1313" and Chicago University which had a strong political science department. Locally the pattern was repeated: there might be a bureau of municipal research in a fair-sized town and there would be a close link with the local university, which had a much wider scope than a British university and trained people in fairly humble callings. Professor Mackenzie emphasized the weaknesses of the American system and the difference in conditions: but posed the question whether adaptation of this pattern would be possible and useful in Britain. It might help the smaller local authorities to stand much more on their own feet, because they would have access to experts who could do the necessary research into their problems and so remove their present reliance on Whitehall. The larger authorities might benefit as well, because there would be facilities for fairly senior staff to gain wider experience and opportunities to improve business efficiency without depending on an organization concerned only with O. and M. which savoured too much of an audit, especially if isolated from any wider kind of "consultancy".

Professor Mackenzie also thought that there was more room for research into what he called the archaeology of local government. Vast masses of papers were available for sorting and studying and much social and local history remained to be written. Finally, he said that some of his colleagues at other universities had recently written to *The Times* urging the Government to tackle the reform of local government by setting up a Royal Commission during their present term. This he thought was a branch of study particularly suited to an independent research agency, who might perhaps be better fitted than a Royal Commission to produce a factual report as a basis for decisions about policy.

The Society were the guests of the Lord Mayor and corporation at luncheon, which was also attended by leading members of the city council. In the afternoon the party toured the Manchester Ship Canal in one of the company's launches.

BIRKENHEAD POLICE REPORT

It is common to find statements in reports of chief constables showing that numbers are below authorized strength. The chief constable of Birkenhead reports that his force is thirty-four below strength, and adds that progress in bringing it up to strength is very slow. The type of recruit has not been up to former standards—a fact which is qualified by the progress reports received from the training schools. On the whole, it would seem that the position is not unhopeful, since although the educational attainments of applicants show a poor return for the enhanced facilities which are now available, among the thirty-eight recruited during 1953 are some excellent men who, with training and experience, will prove to be no less satisfactory than their predecessors. As to the special constabulary, progress in recruiting remains slow, but those who come forward are keen and efficient.

Here, as elsewhere, housing is one of the difficulties in the way of recruitment. With an intake of thirty-eight recruits in 1953, the list of men in need of accommodation is rapidly growing. This problem, says the report, is vital to the contentment and efficiency of the force.

It is satisfactory to learn that there seems to be a steady tendency for the volume of crime to decrease and for the percentage of detections to increase, although crime is still above pre-war level. The chief constable urges householders who are going away to inform the police so that the premises may receive extra supervision during their absence, thus reducing the probability of housebreaking. Generally, the attitude of householders, in contrast to that of occupiers of business premises, towards any special effort at crime prevention, has been discouraging.

The following statement about juvenile offenders is encouraging: "The most pleasing feature of this report is that I am able to record a remarkable decrease of offences for which children and young persons were responsible.

"The decrease has occurred in respect of both indictable and non-indictable offences; the former dropped from 560 to 331—by forty *per cent.*—and the latter from 246 to 224—by nine *per cent.*—an overall reduction of thirty-one *per cent.*

"The value of a personal talk with young offenders and their parents is reflected in the figures concerning children cautioned at my office for criminal offences. Of 175 cautioned in 1952, only two have so far offended again."

HULL CHILDREN'S OFFICER'S REPORT

The report of Mr. Henry Norris, Children's Officer for Kingston upon Hull, covering the period December 1, 1952, to November 30, 1953, contains some interesting information about the policy and methods of the Children's Committee. One staff change, the appointment of an admissions officer has meant that more inquiries can be made into each application for admission to care, so that children are admitted to homes only in exceptional circumstances. Relatives and neighbours are seen, and everything is done to keep the child with friends if possible. If he is taken into care, the aim is to restore him to relatives rather than to keep him, so long as he returns to suitable people.

There is a striking passage on the attitude of some parents: "Frequently, too, we find that parents are quite unaware that they will be expected to make a contribution towards the maintenance of their children in care. It is remarkable how some people can find relatives and friends willing to look after their children when we tell them how much it is likely to cost them if their children are admitted to care. Previously they had given us the impression that they had no one to turn to. Now we always give parents this information at the time we investigate their application." Again, it is pointed out that many parents think only of material conditions in the home and forget that a child can suffer mentally, even at an early age, from being placed in a "home". This no doubt is due to want of imagination rather than to indifference, but it is another respect in which parental attitude needs to be improved. Parents tend to lean too much on the local authorities, as in the case of the man whose wife was going away for her confinement and who asked that his other children should be taken into care, he having arranged to go for a holiday.

It is gratifying to read that in Hull the position has been reached when all children who are ordinarily considered suitable for boarding out can be placed in foster homes within a short time. Mr. Norris suggests that even the difficult children not generally regarded as suitable could be boarded out if only courageous foster parents could be found, who were willing to tackle the job of giving affection and a home to those children, who, even more than normal children, require individual attention and affection.

Additional family homes have been opened, and in these it has been possible to place brothers and sisters from one or two families, which seems much better than having to separate them completely and, for most children, more suitable than institutions. The report adds, "We have at all times striven to maintain anonymity with these small homes so that they become just another house in the neighbourhood, and our family have soon become absorbed in the immediate community."

Commenting on the attendance centre, Mr. Norris expresses the opinion that this shock treatment is tending to "warn off" a certain percentage of offenders who might find their way into approved schools. "From our three years' experience, it is interesting to note that of 110 boys ordered to attend since the opening of the centre in January, 1951, twenty-six have appeared again before the court, and of these only thirteen were committed to approved schools."

The report includes a letter from the Home Office in which the Secretary of State expressed his pleasure at the progress which has been made towards the completion of the Council's plans for the provision of residential accommodation of a high standard.

PLYMOUTH PROBATION REPORT

In their report for the year 1953, Mrs. Woolcombe, chairman of the probation committee for the city of Plymouth, and Mr. Rowland Greville, senior probation officer, state "The policy of probation officers taking early action on cases proving to be unco-operative and unresponsive, and the juvenile bench supporting them by 'shock treatment' such as twenty-eight days detention and attendance centre, combined with a 'follow up' of probation, is paying dividends. The view is supported by the increase in detention and attendance

centres, and the fall in committals to approved schools, or the local authority. If, for no other reason than finance, this is a satisfactory aspect of the year's work . . . Intelligent use of a probation service, adequately staffed, will produce results which will be reflected, not only in financial savings, but in reduced figures of juvenile crime ! " In spite of a ten *per cent.* drop in the number of juveniles appearing before the court, there was an increase in the number placed on probation or under supervision, results appear to have been satisfactory.

There has been an increase in the work at quarter sessions during 1953. Ninety-seven reports were submitted on persons appearing before quarter sessions, compared with sixty-three in 1952. The number placed on probation was twenty-nine, compared with nineteen in 1952.

The percentage terminating their probation satisfactorily or discharged—forty-four *per cent.*, says the report, makes depressing reading. Probation service is perturbed by these results, but believe that the submission of detailed reports on offenders before quarter sessions courts may assist in the selection of cases for probation. Inevitably, cases such as these, are the most difficult to supervise.

There is a pleasant and encouraging account of the work of the Mayflower training home for mothers. This home has been doing good work for some years, and whole families have been benefited.

Dealing with after-care, the report describes some of the difficulties and disappointments likely to be encountered by the boy who has just left Borstal, and the way in which probation officers tackle the problem of after-care. Borstal cases, it is said, are the best organized, and voluntary after-care cases—the worst.

There is a shrewd appreciation of the kind of matrimonial trouble that often brings work to probation officers. "Many of their complaints against each other were so petty as to give the impression that when they took their marriage vows they were incapable of understanding what they had promised. Too many were conscious only of their rights and unconscious of their responsibilities."

In the report of the juvenile court panel there is a comment on the attendance centre. " The attendance centre has now been operating for more than twelve months, and it would appear that the system is providing a satisfactory method of dealing with certain kinds of juvenile delinquent and is for the most part successful in instilling a sense of discipline and the necessity for good behaviour. Of the boys sent to the attendance centre three only have since been found guilty of offences."

LAW AND PENALTIES IN MAGISTERIAL AND OTHER COURTS

No. 49.

A FOOTBALL LOTTERY

A large number of charges all laid under s. 22 of the Betting and Lotteries Act, 1934, were heard by Mr. Walter Briggs, the learned stipendiary magistrate, and a lay magistrate at Huddersfield magistrates' court, earlier this year. A large number of persons were charged with various offences arising out of the conduct of what the prosecution alleged was an illegal lottery conducted by a limited company carrying on business in Wigan.

For the prosecution it was stated that in the months of January and February, 1954, the Wigan company promoted a competition known as " K.C. Fixed Odds High Score List " in association with the priests of three Roman Catholic churches in Huddersfield, to whom a percentage of moneys subscribed was paid in aid of church funds.

Each week the company published a list of forty-six pairs of football teams which were due to play each other on the following Saturday, and each pair was represented by a code number. The teams represented by these code numbers changed each week.

Books containing the code numbers arranged in twenty-five different combinations of three games each were issued to collectors and " clients " were asked to select one combination of three numbers and write their names in a book against the combination selected. Collectors also had a number of team sheets containing all the code numbers set against the matches they represented, books of rules and a number of coupon entry forms on which a " client " could, if he preferred, make his own three game selection from the code numbers on the team sheet. In that event he had to post the coupon entry to the company himself.

Only four *per cent.* to five *per cent.* of " clients " used the coupon entry forms. The majority chose one of the twenty-five printed combinations of three games and having once made a selection, obtained the same numbers week after week.

On the back of the team sheets was printed a list of prizes, *e.g.* :

£100 to 1*s.* against the client selecting the three matches (as printed) having the highest aggregate score ;

£60 to 1*s.* for the three matches with the second highest aggregate score ;

And " four equal next best prizes " of £35 to 1*s.*,

(*a*) For the three highest scoring home teams ;

(*b*) For the three highest scoring away teams ;

(*c*) For the two highest scoring home teams with the highest scoring away team ; and

(*d*) For the two highest scoring away teams with the highest scoring home team.

To all successful clients fixed odds were paid irrespective of the number of clients participating in the competition, but if different codes tied the prize would be divided.

The stakes of 1*s.* were collected by collectors after the matches and handed to the priests to be transmitted to the company but only one stake of 1*s.* was paid by any one " client " as the consideration for a chance of winning any of the prizes.

The collecting books, team sheets, books of rules and coupon entry forms were all printed by another company.

The defendants were charged, in substance, as follows :

The Wigan company with (i) distributing tickets in a lottery, (ii) publishing lists of prize winners in a lottery and (iii) using premises for purposes connected with the promotion and conduct of a lottery and aiding and abetting others in so doing. The printing company with (i) printing tickets for use in a lottery, (ii) printing a list of prize winners and winning tickets in a lottery and (iii) using premises for purposes connected with the promotion and conduct of a lottery. The collectors with (i) having in their possession for distribution and distributing chances in a lottery and (ii) having in their possession for distribution a list of prize winners in a lottery. The Roman Catholic priests with (i) using premises connected with the conduct of a lottery and (ii) aiding and abetting others in distributing chances in in a lottery.

The secretary and directors of the two defendant companies were charged pursuant to s. 29 of the Act with all the offences with which the two companies were charged.

For the prosecution it was contended that the competition was a lottery ; the majority of " clients " chose combinations of code numbers from the printed list of combinations and retained the same numbers each week although they represented different matches ; even if some clients chose different combinations from week to week no skill was involved ; if some " clients " made up their own combinations each week from the team sheets, the competition would be divided into two parts ; one involving a very small measure of skill and the other being entirely dependent on chance. This would make the whole competition an unlawful lottery. The number of goals scored in a particular match depended not only on the skill of the players but on weather, injuries, accidents, etc. ; if there were skill in forecasting the goals scored in three matches, that skill could equally be directed to winning the second prize, but not the remaining four prizes.

For the defence it was argued that the competition was fixed odds credit betting, the collectors were supplied with team sheets (roughly one for each punter) and each punter knew he could make up his own combination of three numbers from the team sheets ; whether he exercised his choice was not the test. Each punter knew further or had the means of knowing before he made his bet what the combination he had selected meant in terms of matches ; the odds offered were known to each punter and the obligation of the Wigan Company to the individual punter was fixed and determined when signature was made or the coupon posted or received ; there was an obligation on the punter to pay 1*s.* after the matches were played and a concurrent obligation on the company to pay the agreed odds if the punter won ; in the event of two or more punters choosing the same winning numbers there was an obligation on the company to pay each the full odds. The odds were only reduced when there was a dead heat as in horse racing.

Mr. Daniel Brabin, Q.C., for the defence, supported his argument by reference to the following cases, *viz.*, *R.* v. *Stoddart* (1901) 64 J.P. 774 ; *Strang* v. *Brown* (1923), Sc. L.T. 638 ; *Suttle* v. *Cresswell* [1926] 1 K.B. 264 and *Strang* v. *Adair*, Digest Supplement, 1949, Vol. 25, p. 29.

The learned stipendiary magistrate reviewed the cases cited for the

defence and said they did not seem to be decisive of the present case. In view of the argument for the defence that what happened in this case was fixed odds betting and not a lottery, it was important to analyse what the bet was.

First, it was an offer of £300 against a credit stake of 1*s.* but the events on which the allocation of the prizes depended differed. There was an offer of £100 to 1*s.* against the backer selecting the three matches having the highest aggregate score. Then there was an offer of £60 to 1*s.* against the same three matches producing the second highest aggregate score. Those could not be the same, but only one stake was paid.

Then again for the same stake, there were prizes of £35 to 1*s.* for (*a*) the three teams being the three highest scoring home teams in the same selected matches which might or might not be the same as the first and second prizes, (*b*) the three teams being the highest scoring away teams in the same selected matches. These might or might not be the same as the away teams concerned in the first, second or third prizes. Then there were prizes for the two highest scoring home teams with the highest scoring away team and for the two highest scoring away teams and for the highest scoring home team.

It was to be observed that in the case of the last four prizes it was on teams and not matches which the backer was betting. There was one stake of 1*s.* for all these events and in each the backer backed the same teams.

As was said by Atkinson, J., in *Boucher* v. *Rowsell* (1947) 111 J.P. 329, it might be that if the bet had been confined to the first prize only, the competition might have been conducted on a legal basis, but the addition of the other prizes—all for the same stake—made this a distribution of prizes by lot or chance; the second, third, fourth, fifth and sixth prizes constituted sixty-six *per cent.* of the whole prize money. Atkinson, J., held in *Boucher* v. *Rowsell, supra*, that where thirty-one *per cent.* of the prize money was distributed entirely by chance that was sufficient to constitute a lottery. In that case Lord Goddard, C.J., expressed the opinion that forecasting which teams would score the largest number of goals was a complete and absolute lottery in itself and with this Oliver, J., agreed. Atkinson, J., appeared to have had some doubts on this point.

In *Barker* v. *Mumby* (1939) 103 J.P. 125, the argument for the defendants was practically the same as that presented by Mr. Brabin and it convinced the learned stipendiary for Hull; but Lord Hewart, C.J., said that the word "lottery" was written all over the scheme and the case was sent back with a direction to convict.

The learned magistrate dismissed some of the charges against the priests but found the remaining charges proved. Orders of absolute discharge were made on a number of charges which were proved but regarded as alternative and fines were imposed on the various defendants aggregating £127. Of this sum the Wigan company was fined £50 and ordered to pay costs of £25 and the printing company was fined £50.

COMMENT

The writer has been able to set out in full detail this interesting case thanks to the courtesy of Mr. C. Drabble, clerk to the Huddersfield justices, who forwarded a copy of the judgment.

It is a sad commentary on present day conditions when Roman Catholic priests find themselves on the wrong side of the law in the efforts to raise funds for their churches. Is it too much to hope that the present Government, which in some respects has shown political courage, will give a further demonstration that it is not afraid of the consequences when it believes its cause to be just and sweep away our outmoded betting laws?

Every educated person in the country knows that these laws are inequitable in that they distinguish between the rich and the poor and further that they lay us open to the unanswerable taunt of our enemies that they well demonstrate our inherent hypocrisy.

R.L.H.

PARLIAMENTARY INTELLIGENCE

Progress of Bills

HOUSE OF LORDS

Tuesday, June 15

HOUSING REPAIRS AND RENTS BILL, read 3a.
HIRE PURCHASE BILL, read 2a.

Thursday, June 17

INDUSTRIAL AND PROVIDENT SOCIETIES (AMENDMENT) BILL, read 2a.
TRUSTEE SAVINGS BANK BILL, read 2a,
POST OFFICE SAVINGS BANK BILL, read 2a.

HOUSE OF COMMONS

Friday, June 18

LANDLORD AND TENANT BILL, read 3a.

THE WEEK IN PARLIAMENT

From Our Lobby Correspondent

Mr. B. Janner (Leicester N-W) asked the Secretary of State for the Home Department in the Commons how many boys under the age of eighteen years had been charged with wilful murder or manslaughter during each of the last five years; and how many were convicted.

The Secretary of State for the Home Department, Sir David Maxwell Fyfe, replied that the number of male persons under the age of eighteen against whom charges of murder were preferred was not recorded, but statistics were available of the number of such persons committed for trial on either of those charges and of the results of the trials. He circulated the following details:

MALE PERSONS UNDER THE AGE OF EIGHTEEN COMMITTED FOR TRIAL ON CHARGES OF MURDER OR MANSLAUGHTER

Year	*Committed for trial for murder*	*Result*		
		Not convicted of either murder or manslaughter	*Convicted of murder*	*Convicted of manslaughter*
1949 ..	4	1	2	1
1950 ..	3	—	2	1
1951 ..	2	—	1	1
1952 ..	5	—	2	3
1953 ..	6	3	—	3

Year	*Committed for trial for manslaughter*	*Result*	
		Not convicted of manslaughter	*Convicted of manslaughter*
1949 ..	2	1	1
1950 ..	2	—	2
1951 ..	2	—	2
1952 ..	2	1	1
1953 ..	2	2	—

NOTE: The results shown were not necessarily reached in the same calendar year as the committal for trial.

CORRESPONDENCE

The Editor,
Justice of the Peace and
Local Government Review.

DEAR SIR,

LITTER—A GROWING PROBLEM

I am grateful for your article at p. 336, *ante*.

This is a growing problem in this town; the council has not found much co-operation from the local police in checking the offences of littering the streets with paper, etc., and your article will give them encouragement to try and make others see that, as you say, "this kind of offence is *not* trivial."

I shall send a copy of the article to the local chief of police and hope that it may result in action, even if only warnings, where it is considered that such would check the growth of the increasing nuisance.

Yours faithfully,
J. TILLOTSON HYDE,
Clerk of the Council.

Council Offices,
Leighton Buzzard, Beds.

NOTICES

The next court of quarter sesssions for the city of Winchester is to be held on Wednesday, July 21, 1954, at the Guildhall, Winchester, opening at 10.45 *a.m.*

THE RECEIPT

"Received with thanks",
It's courteous and brief;
It might have added
"And with great relief".

J.P.C.

PERSONALIA

APPOINTMENTS

Mr. William Rigby, deputy clerk to West Lancashire rural district council, has been promoted to clerk. Replacing him as deputy clerk is Mr. A. J. Burgess, formerly chief administrative assistant.

Detective Chief Inspector Allan Roberts has been promoted second-in-command of the C.I.D. department at county police headquarters, Hutton, in succession to Superintendent R. McCartney, who has moved to Bolton.

Mr. Alexander Brimelow has been appointed employees' side joint secretary of the Joint Negotiating Committee for justices' clerks' assistants and clerical staff in the National Association of Justices' Clerks' Assistants.

RETIREMENTS

Mr. Ernest Stapleton, clerk to Newport Pagnell rural district council for the last fifteen years, is to retire next March after fifty-one years in the council's service.

OBITUARY

Mr. William Henry Trump, a former clerk to Rhymney, Mon., urban district council, has died at the age of eighty-three. Mr. Trump, who was admitted in 1897, practised as a solicitor at Rhymney, his native town, for fifty-seven years, retiring last March. He was clerk to the urban district council for twenty-five years.

Mr. Robert Langdon Yorke, a puisne judge in the High Court of Allahabad, India, from 1943 until 1947, has died at the age of sixty-seven.

THE MARTYRDOM OF MAN

Law tutors, anxious to impress upon their pupils the constitutional omnipotence of the Legislature, are wont to say that in this country an Act of Parliament can do anything except turn a man into a woman or a woman into a man. That is a feat which Nature from time to time achieves, enacting in real life the legend of that beautiful youth, the son of Hermes and Aphrodite. The fountain nymph of Salmacis, so runs the story, became so enamoured of him that she prayed the Gods to unite him with her for ever—a prayer which was fulfilled, in a literal and physical sense, by the evolution of a composite being endowed with the characteristics of both sexes together.

Episodes of this kind are comparatively rare, but occasional examples of a change of sex are still apt to excite the prurient curiosity of a certain type of journalism. One might imagine that the canons of good taste would require such awkward metamorphoses to remain anonymous; but some of the illustrated weeklies are no respecters of persons, and consideration for the victim whose misfortune is so publicized must not be allowed to interfere with considerations of circulation. Without going into personalities it is perhaps permissible for this respectable Journal to observe that certain kinds of activities appear to attract persons of what (to all outward seeming) is a common or indeterminate sex; chief of these is the vocal perversion known as "crooning," which is calculated to cause acute embarrassment to anyone of normally aesthetic sensibility. We have heard people include, in the same category, those long-haired men and short-haired women, generally lank and unwashed, who fall in a big way for the Existentialist Doctrines of Monsieur Jean-Paul Sartre; but that may be mere ideological prejudice.

It must be strange to the philosophic mind that the first-fruits of the emancipation of women were to be found in their close, almost slavish, imitation of men, in physical appearance, in dress, in language, habit and vocation. Political, social and professional equality of rights between the sexes (as between persons of different race, religion and colour) is an ideal which only ignorant intolerance will oppose; but it was a back-handed compliment to the ladies to encourage them to look, speak and behave like men. It is as though the feminists were telling their followers, in those early days of the long fight to establish women's rights, that the masculine way of doing things was the one they ought to adopt and cultivate. This is not equality and emancipation but adulation and servitude. Flattened busts and slim hips; short-cropped hair; tight-fitting trousers; smoking, drinking and swearing; indulgence in strenuous sports and fatiguing manual work—these were as much sought after by women as by men in the nineteen-twenties; but they are all essentially male characteristics or activities. Final victory for the equalitarians will be in sight only when the men go in for voluptuous curves before and behind; luxuriant tresses; flowing dresses and *négligés*; over-indulgence in chocolates, sticky cakes and small-talk; croquet and ping-pong; millinery and babycraft. It is obviously unfair that the trend should be all in the one direction.

The objections will come, as always, from the narrow-minded puritans; yet Milton, the greatest Puritan of them all, envisaged these reformist ideals in the First Book of *Paradise Lost*:

> "For spirits, when they please,
> Can either sex assume, or both; so soft
> And uncompounded is their essence pure,
> Not tied or manacled with joint or limb,
> Nor founded on the brittle strength of bones
> Like cumbrous flesh; but in what shape they choose,
> Dilated or condensed, bright or obscure,
> Can execute their airy purposes."

Martyrs in plenty there were, in the early years of this century, to the cause of women's emancipation, and martyrs there are still today. A recent case at Uxbridge County Court has lighted the first flame of resistance to the present one-sided trend. The plaintiff, aptly named Norman John Martyr, is one of those "bright spirits" to whom the poet has applied the descriptive epithet "dilated"—a phenomenon which occurs to many a happily-married man in comfortable middle life. Suffering some discomfort from the constriction of his garments, he sent his wife to the tailor with a pair of trousers for the purpose of adaptation to his extended waist-line. When, at a subsequent date, she called to collect them, it was found that they had been converted into a skirt.

Evolution, not revolution, is the English way, and the plaintiff, despite his name, naturally objected to being made, without his consent, a first martyr to the cause. So far as we can see he had open to him several grounds of action. Conversion, in a literal sense, was one, and probably (on the analogy of *Monson* v. *Tussaud's Ltd.* [1894] 1 Q.B. 671) libel also, the innuendo being so obvious as to require little or no ingenuity on the part of the pleader. In the event he seems to have contented himself with the pleas of trespass and negligence, and was awarded twelve guineas damages. From the legal point of view it is to be regretted that defamation was not pleaded, for argument on this issue would have enriched the Reports. The defendant is to be commiserated on the failure of this bold attempt to advance reform; but the case will have taught him the desirability of forwarding the cause by less drastic and more subtle means.

A.L.P.

PRACTICAL POINTS

All questions for consideration should be addressed to "The Publishers of the Justice of the Peace and Local Government Review, Little London, Chichester, Sussex." The questions of yearly and half-yearly subscribers only are answerable in the Journal. The name and address of the subscriber must accompany each communication. All communications must be typewritten or written on one side of the paper only, and should be in duplicate.

1.—Crown Property—*Public Health nuisance.*

My council have been requested by the occupier of a property in their district to take such action as may be necessary to secure the abatement of a nuisance which has arisen due to the defective guttering of an adjoining property. The owner of the property with the defective guttering died a widower without known relations, and intestate. An approach has been made by my council to the Treasury Solicitor, as it was understood, in these cases, an estate would devolve upon the Crown. The Treasury Solicitor has now informed me that, after long investigation, he has decided that he will not undertake the administration of the estate as it appears doubtful whether there would ultimately be any balance for the Crown after costs of administration had been met, but that the administration of the estate should be left to a creditor. So far as I am aware, no creditor has obtained a grant of letter of administration.

I shall be glad to have your opinion on the following points :

(1) Can the Treasury Solicitor refuse to accept responsibility for the administration of this estate ?

(2) If the Treasury Solicitor will not accept responsibility, on whom would you suggest the council might serve a notice under the Public Health Act, 1936, in order to secure the abatement of the nuisance ?

(3) Can you advise generally on the action which might be taken by the council in this matter ? BEQUESTIC.

Answer.

The property will at common law have vested in the Crown, but the Treasury Solicitor (or other officer of the Crown) cannot be obliged to take possession of it. We do not see any practical step that can be taken.

2.—Employment of Young Persons—*Offence—Who may prosecute.*

Information has been received by a county borough council, which is also the local education authority, that a young person, under the age of eighteen, is employed at night in an "industrial undertaking," contrary to the Employment of Women, Young Persons and Children Act, 1920, (s. 1 and Part II of the Schedule). By reason of the exception in s. 151 (6) of the Factories Act, 1937, the factory inspector has no responsibility.

Section 1 (6) (*a*) of the 1920 Act applied the provisions of ss. 5 (1) and (2), 6 and 8 of the Employment of Children Act, 1903, to contraventions of the 1920 Act, but notwithstanding this there seems to have been no duty on (and possibly no power for) a local authority to take proceedings under the 1920 Act. The Education Act, 1918, s. 13, amended the 1903 Act, and the effect appears to have been to make the powers and duties of a local authority under that Act, powers and duties of the local education authority, although it seems very doubtful whether this in any way affected the provisions of the 1920 Act, as the above mentioned sections of the 1903 Act were only enforcement provisions. The 1903 Act was repealed by the Education Act, 1921, ss. 96, 97 and 98 of which re-enacted the provisions of ss. 5, 6 and 8 of the 1903 Act. Similar provisions to those contained in ss. 96 and 98 of the Education Act, 1921, are contained in ss. 21 and 28 of the Children and Young Persons Act, 1933. The Education Act, 1944, repealed the whole of the Act of 1921 without re-enacting any of the provisions of ss. 96, 97 and 98.

Although the relevant parts of the Employment of Women, Young Persons and Children Act, 1920 are still in force, it seems extremely doubtful (and notwithstanding s. 38 (1) of the Interpretation Act, 1889) whether provisions similar to those of ss. 5 (1) and (2) and 6 and 8 of the 1903 Act, still apply to the 1920 Act.

Your opinion is requested on the following points :

(1) Is there now, or has there ever been (i) a duty or (ii) a power, on the part of (*a*) a local authority or (*b*) a local education authority, to prosecute under, or otherwise enforce, the 1920 Act, as regards contraventions of the type mentioned above ?

(2) Could proceedings be more conveniently taken by (*a*) the police or (*b*) a common informer, and in the latter case would it be expedient for an officer of the local authority or local education authority, possibly at their request, to act as common informer ?

SWETO.

Answer.

(1) In our opinion there was, impliedly at all events, power for the local education authority to take proceedings, *see* Education Act, 1921, s. 98, but not necessarily a duty. It appears, however, that there is now neither a power nor a duty conferred by statute upon such an authority, though this does not in our opinion prevent the authority from prosecuting as an ordinary informant.

(2) We think either the police or an officer of the council could properly lay an information, whichever is thought the more convenient course.

3.—Licensing—*Notice served on chief officer of police—To what address should notice be directed.*

By reason of sch. 3 and s. 165 (4) of the Licensing Act, 1953, notices of application for new licences, transfers and ordinary and special removals have to be served, outside London, upon the chief constable for the area. By ss. 148 (2) and 165 (4) of the Act, similar notices must be served in respect of applications for occasional licences.

Having regard to *R.* v. *Riley* (1889) and *R.* v. *Birley* (1891), do you consider it sufficient if a notice is served upon the chief constable at divisional headquarters, or is it your opinion that service should be at his residence or usual office, *i.e.*, police headquarters ? N. PETAL.

Answer.

In our opinion, a chief constable is in occupation of every police station in his police area and he is entitled to accept service of any document at any place he chooses. We see no reason why he should not so organize his area that notices of applications, addressed to him, may be delivered to any of his subordinate officers at local police stations. We think that many county chief constables have indicated that they require notices of applications for new licences or removals to be served upon them at county police headquarters : notices of applications for transfers to be served upon them at divisional headquarters ; and notices of applications for occasional licences to be served upon them at the local police headquarters ; and we see no objection to this practice.

We do not think that *R.* v. *Birley, Lancashire, JJ.* (1891) 55 J.P. 88, has any application to the particular point, and we do not think that *R.* v. *Riley* (1889) 53 J.P. 452 would be followed under the modern law so as to invalidate the service of a notice addressed to the chief officer of police and served in accordance with his directions by delivering it to a subordinate officer.

4.—Licensing—*Occasional licence—Whether may be granted to holder of justices' on-licence in different licensing district.*

Licensees holding full on-licences in other districts are granted occasional licences for dances, cattle shows and other functions in this district, in which they hold no licences. Is there anything in the recent case of *R.* v. *Brighton Borough JJ., Ex parte Jarvis* [1954] 1 All E.R. 197 ; 118 J.P. 117 ; which bears on this practice ?

"N. CAMERA PRINCIPIS."

Answer.

The judgments in *R.* v. *Brighton JJ., Ex parte Jarvis, supra,* contain nothing bearing on the practice of the grant to the holder of a justices' on-licence in one licensing district applying for an occasional licence to sell intoxicating liquor in another district. The point was not overlooked by the court ; during the argument the following passage occurs (*see* report in *The Brewing Trade Review* (1954) at p. 115 :

The Lord Chief Justice : . . . Why should a man, because he happens to be the holder of an on-licence in Taunton, be able to get an occasional licence in Brighton ?

Mr. Brown : Anyone may say the same with regard to the Grand National. I am told that the caterers for the Grand National are London caterers.

The Lord Chief Justice : Lyons, and people of that sort, who are nation-wide caterers, get licences. It is quite a different matter . . .

In our opinion, the *Brighton* case does nothing to fetter the discretion of a magistrates' court to grant an occasional licence (being a licence to sell intoxicating liquor for consumption "on"), to the holder of a justices' on-licence in another licensing district.

5.—Local Government Act, 1933—*Review of county districts—Transfer of officers.*

Proposals have been submitted by the rural district council to the county council for, *inter alia*, the urbanization of the area within the rural district which has been designated the site of a new town by an order made under the New Towns Act, 1946, and for the merging together of the remainder of the rural district and an adjoining rural district. Both rural district councils are in favour of the proposals as submitted, and the county council have found a *prima facie* case therefor. Inquiries into the proposals generally are now in the course of being heard under s. 141 of the Local Government Act, 1933. A scheme and order if made constituting the new urban and rural districts will naturally contain provisions concerning existing officers, as envisaged by s. 150 of the Act, which, as far as I can see, relates solely to officers of the two district councils concerned.

There are in the area officers employed by the new town development corporation established under the Act of 1946, which is building the area of the new urban district, and it may be that suggestions will be put forward for the transfer of some of these officers to the new urban

district council, particularly having regard to the anticipated short life of development corporations under present government policy.

Personally I cannot see how any scheme or order made under Part VI of the Act of 1933 can contain provision for the transfer of officers of development corporations to the new urban district council, nor can I see any other way in which development corporation officers can be appointed to the staff of the new local authority, until it has been set up and its members elected, when naturally it will itself make its own further appointments in the normal way. I should appreciate your observations as to whether or not the position is as it appears to me.

AEMILIUS.

Answer.

We agree with your opinion. The officials of the corporation are brought into local government superannuation by s. 18 of the New Towns Act, 1946, but the corporation is not within s. 141, nor are its officers within s. 150, of the Local Government Act, 1933.

6.—Magistrates—*Practice and procedure—Legal aid certificate—Discretion of justices as to fees.*

With reference 1953 S.I. 1429, will you please state whether the basic fee to be allowed to a solicitor under a legal aid certificate is £3 3*s.* 0*d.*, subject to the power of the justices at their discretion to make an addition of fifty *per cent.*, *i.e.*, £1 11*s.* 6*d.*, pursuant to para. 1 (4) of the Statutory Instrument.

The point is should the word " may " in that sub-paragraph be treated as equivalent to " must " with the result that a fee of £4 14*s.* 6*d.* is automatically payable.

JUVOFEE.

Answer.

The justices granting a legal aid certificate have no control over the amount of the fees. The effect of para. 1 (4) is that whatever percentage addition is for the time being authorized by Order LXV is automatically added to the fees in the earlier provisions of reg. 1.

7.—Magistrates—*Practice and procedure—Water rate—Recovery separately from general rate—Form of summons—Separate summons and distress warrant in each case—Fees.*

Questions have arisen concerning the recovery of water rates summarily by a local authority. There is no local enactment in force authorizing the local authority to recover water rates in the same manner as general rates.

My own view is :

(1) The water rate cannot be included in the summons for general rate. Form 83 in the Magistrates' Courts (Forms) Rules, 1952, must be used. Similarly there must be a separate complaint for each person.

(2) In default of payment, there must be a separate distress warrant for each debtor, the schedule type of distress warrant under the Distress for Rates Act, 1849, not being applicable.

(3) A water rate is not a " rate " for the purpose of fees and the fees chargeable are those under the heading " Civil Debt (not including Rates) " in sch. 4 to the Magistrates' Courts Act, 1952, and not those under the heading " Rates." There is, however, the point that under the latter scale there is provision for a fee for an " Order," which appears to indicate that the scale might be intended to cover civil debt procedure for recovery of water rates.

JORY.

Answer.

(1) We agree.

(2) We agree.

(3) We have had occasion to consider this question previously, and think the better opinion is that the heading " Rate " applies, not the heading " Civil Debt," so that the " order " carries a fee of 2*s.*, not 3*s.* It is true that the general rate does not (as the old poor rate did not) call for an " order " to enforce it, but it is possible to reconcile the two parts of the schedule, and give effect to the parenthesis under the heading " Civil Debt," by regarding the word " order " (under the heading " Rate ") as relating to such rates or so-called rates (like the water rate) as do involve the making of an order.

8.—Roadside Waste—*Alleged obstruction—Local Act.*

A local Act provides that no person shall sell on any roadside waste adjacent to a trunk road any food in such a manner that any obstruction is caused to vehicles using such road by a vehicle which had been used by a person buying such food. An offence against this section is alleged to have been committed by a man who has a caravan, from which he sells food, standing on a piece of land that he has rented from the owners and for which he pays rates to the local borough council. I understand that it will be alleged by the defence that this land cannot be properly described as roadside waste within the meaning of the act since the caravan is situated upon land in private ownership and which is shown to have been enclosed in the 1946 ordinance survey, though the fence and/or hedge which then enclosed the land has been removed and was not there on the day of the alleged offence. The prosecution will rely on the case of *Curtis* v. *Kesteven County Council* (1891) 60 L.J. Ch. 103. It is admitted that the defendant would be within his rights in erecting a fence along the line of the fence shown on the survey map but say the prosecution, the fence was not there on the day in question and therefore the land constitutes roadside waste.

I shall be glad of your valued opinion as to whether you agree with my view that land for which a rent is paid, which is occupied for business purposes and for which rates are charged by and paid to the local borough council, cannot be roadside waste.

A.C.J.B.

Answer.

The final sentence of the query may be too wide as a statement of law, because encroachment on roadside waste is not unknown and, if a rating authority found a lessee enjoying in fact such control over a piece of ground as to constitute rateable occupation, it would be their duty to move for inclusion of the ground in the valuation list. We think the proposition may, however, be put thus : if the land is part of the roadside waste, the council have under s. 26 (1) of the Local Government Act, 1933, a statutory duty to prevent unlawful encroachment. Moreover, the Minister of Transport would be s. 3 of the Trunk Roads Act, 1936, applying s. 11 of the Local Government Act, 1888, have a power to do so. There is therefore at least *prima facie* ground for supposing that this land is not regarded by the local authority or by the Minister as being roadside waste.

Pratt & Mackenzie, edition of 1952, p. 360, says of *Curtis* v. *Kesteven County Council*, that North, J., " can hardly have intended to lay down, as a general proposition, that . . . in every case strips of grass bordering the installed part of a main road are roadside wastes within the meaning of this subsection," *i.e.*, s. 11 (1) of the Act of 1888.

We should say that the expression " roadside waste " in the local Act, in the absence of a definition, has the ordinary meaning of land which has been left unenclosed when the road came into existence, and does not include land formerly enclosed from which the boundary fence has been removed.

9.—Road Traffic Acts—*Goods vehicle—Keeping of records—No goods being carried—Requirement to keep records.*

Concerning the keeping of records by the owners and drivers of vehicles operating under A, B, or C, licences, in accordance with the provisions of s. 16 of the Road and Rail Traffic Act, 1933. There are now a number of people who say that if a licensed goods vehicle, under three tons unladen weight, is being driven but not carrying goods, there is no longer a requirement to keep or carry records. This seems unacceptable to me, as I have always understood that the main reason for the keeping of such records was to prevent fatigue and exploitation of drivers.

Apparently those people who hold the opinion given above base it on *Manning* v. *Hammond* [1951] 2 All E.R. 815, which states that because of the amendments made to para. 2 (1) (*a*) of the schedule by the Motor Vehicles (Variation of Speed Limit) Regulations, 1950, motor vehicles which have pneumatic tyres on all the wheels and, though constructed or adapted to carry goods, do not carry them and, therefore, do not require an A, B, or C licence, are not subject to a speed limit outside a " built-up " area. If this is a true interpretation then it seems that lorry drivers need only show hours worked when driving loaded vehicles, and therefore, in aggregate, only disclose approximately half the hours worked.

JUGCON.

Answer.

We agree that this is a point on which opinions differ. In our view, at any time when the vehicle is being used for a purpose for which no licence under the 1933 Act is necessary, there is no requirement to keep records. We dealt with this matter at greater length in 1952 at 116 J.P.N. 63 (P.P. No. 18) and at 116 J.P.N. 366 (P.P. No. 7).

10.—Road Traffic Act—*Speed limit—3½-ton vehicle used for carriage of passengers and for transporting goods.*

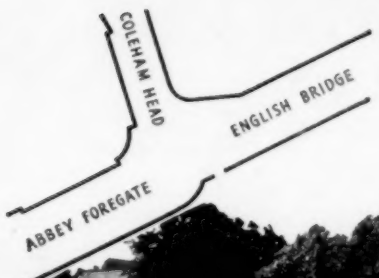
A is the owner of a 3½-tons u.w. vehicle. This vehicle, although constructed for the carriage of passengers, is also used for the transportation of goods. As the vehicle is not used solely for the carriage of passengers, but for a dual purpose, it would appear from sch. 1 to the Road Traffic Act, 1930, that the vehicle is restricted at all times to a speed limit of twenty miles an hour. You may, however, consider that the vehicle should be restricted to twenty miles an hour whilst carrying goods and to thirty miles an hour whilst carrying passengers.

JYLIM.

Answer.

The test is whether the vehicle is *constructed solely* for the carriage of passengers and their effects, not whether it is so used. If it is, and there is no adaptation to fit it for use for the conveyance of goods, the fact that goods are carried does not alter its classification as a passenger vehicle with a speed limit, under para. (1) of the schedule, *supra*, of thirty miles per hour.

If it is not so constructed (as the question rather implies) it is a goods vehicle, para. 2 (1) (*d*) of the schedule applies, and the speed limit is twenty miles per hour at all times.



The English Bridge

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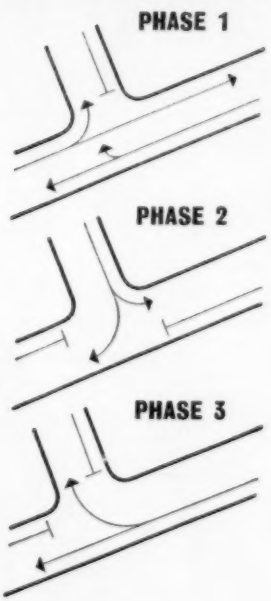

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